

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



OPTIONAL

**76-149**

B  
P75

**United States Court of Appeals  
For the Second Circuit**

THE UNITED STATES OF AMERICA,

*Appellee,*

vs.

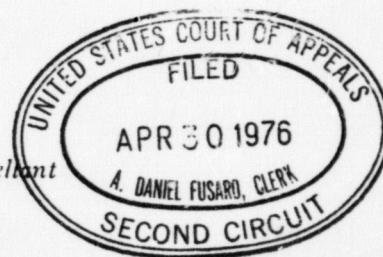
BENJAMIN EISENBERG,

*Defendant-Appellant.*

*On Appeal From The United States District  
Court For The Southern District of New York*

**Appellant's Appendix**

MICHAEL S. WASHOR  
Attorney for Defendant-Appellant  
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**DOCKET ENTRIES**  
**CRIMINAL DOCKET**  
**UNITED STATES DISTRICT COURT**

J. Ford No 109 Rev

### TITLE OF CASE

## THE UNITED STATES

BENJAMIN F. ENGER

CRIM. 856

四百一十一

ATTORNEYS

Mark A. Speiser, Sp. Atty  
791-9110

For Defendant:  
Washor & Washor  
Michael Washor  
16 Court Street  
Brooklyn, N.Y. Tr 5-1292

2) STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISBA
J.S. 2 mailed	Clerk				
J.S. 3 mailed	Marshal				
<u>Violation</u>	Docket fee				
<u>Title</u> 18					
<u>Sec.</u> 1503 & 1623 <u>obstruction of justice. (Ct. 1)</u> <u>Perjury (Cts. 2-5)</u>					
<u>( Five Counts )</u>					
DATE	PROCEEDINGS				
8-26-75	Filed indictment. Order'd sealed. 8/31 ordered & Issued. Owen, J.				
8-27-75	Indictment ordered unsealed. Owen, J.				
9-6-75	Def't. (atty. present) Pleads not guilty. Bail (\$7,500.) continued. Case assigned to Judge Pollack for all purposes. Werker, J.				
9-15-75	Filed notice of appearance of ac'ty. by Michael Washor.				
9-18-75	Filed Govt.'s notice of readiness for trial.				
10-01-75	Filed def't.'s notice of motion re. b/p ret: 10-03-75.				
10-09-75	Filed aff'dvt. of Mark A. Speiser re: response to motion for b/p, discovery, severance of count 5 and dismissal.				
10-22-75	Filed memo-end. on motion docketed 10-1-75. The govt.'s responses to the demanded particulars and discovery data as set forth in the Govt.'s aff'dvt. of 10-9-75 shall suffice, etc. additional demands of def't. are denied, etc. Pollack, J. m/n				

**BEST COPY AVAILABLE**

DATE	PROCEEDINGS
12-3-75	Filed affidavit of Mark A. Speiser re: suppl. the Govt.'s response to a motion for discovery.
12-18-75	Filed documents forwarded by Magistrate Jacobs: docket entry sheet, indictment warrant, S.D.N.Y., disposition sheet, notice of appearance, appearance bond copy of indictment, S.D.N.Y.
12-22-75	Filed Govt.'s request to charge.
1-08-76	Before Judge Pollack- jury trial begun.
1-09-76	Trial cont'd. and concluded. Jury verdict-deft. found guilty on counts 1, 2, 3 and 5 and not guilty on count 4. Deft. to submit motion papers. Pre-sentence report ordered. For sentence 3-9-76 at IIA room 506. Bail cont'd. Pollack, J.
03-15-76	Filed notice of appeal from judgment of 3-9-76. Mailed copies
3-09-76	Filed Judgment (atty. present) cts. 1, 2, 3 and 5 18 mons. impr. ea. count conc.-AND- FINED on cts 1, 2, 3 and 5 \$1,500. on ea. ct. total fine \$6,000. to be paid. 18 U.S.C. (a)(2). Pollack, J. issued all copies.
3-10-76	Filed surety bond in the sum of \$7,500. pending appeal.

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 - - - - - x  
4 UNITED STATES OF AMERICA :  
5 v. : 75 Cr. 850  
6 BENJAMIN EISENBERG :  
7 Defendant :  
8 - - - - - x

9 January 8, 1976,  
10 A.M.

11 Before:

12 Hon. Milton Pollack,  
13 District Judge and a Jury.

14 Appearances:

15 THOMAS J. CAHILL,  
16 United States Attorney,  
17 Mark A. Speiser, Esq.,  
18 Special Attorney, Strike Force.

19 MICHAEL WASHOR, ESQ.,  
20 Attorney for Defendant.

21

22

23

24

25

1 dhh

2

2 (A jury was duly impaneled and sworn.)

3 (Jury present.)

4 THE COURT: All right, Mr. Sepiser, you may address  
5 the jury.

6 MR. SPEISER: Thank you very much, your Honor.

7 Mr. Washor, madam forelady, ladies and gentlemen  
8 of the jury.9 My name is Mark Speiser and I am a special  
10 attorney with the United States Department of Justice and  
11 I'm privileged to represent the government's interests today  
12 in this case.13 My purpose at this point in the trial is merely  
14 to apprise you of what the government charges Mr. Eisenberg  
15 with and how the government intends to prove its case. What  
16 I have to say to you at this point in the trial is not  
17 evidence and you should not deem it to be evidence. The  
18 evidence that you must consider is the testimony that is  
19 elicited on the witness stand.20 The government charges the defendant Benjamin  
21 Eisenberg with four counts of perjury and one count of ob-  
22 struction of justice.23 Mr. Eisenberg appeared before a federal Grand Jury  
24 sitting in this building on May 6, 1975, and before that  
25 Grand Jury he took an oath to tell the truth, the whole truth,

1 dhh

3

2 and nothing but the truth. The government contends that  
3 in response to certain questions that were addressed to  
4 Mr. Eisenberg on May 6, 1975, when he appeared before that  
5 Grand Jury, he lied, he didn't tell the truth, and that his  
6 answers were false.

7 This is what consists of the four counts of  
8 perjury. In addition thereto, the fifth count of the indictment  
9 charges Mr. Eisenberg with obstruction of justice. In that  
10 charge the government alleges that Mr. Eisenberg's testimony  
11 was both false and evasive to the degree that it impeded  
12 and hindered the function of the Grand Jury in its investiga-  
13 tion.

14 Ladies and gentlemen, at this point I shall read  
15 to you a portion of the Grand Jury, of the indictment. That  
16 is, the first four counts which charge Mr. Eisenberg with  
17 perjury.

18 Mr. Eisenberg appeared before the Grand Jury  
19 on May 6, 1975, in connection with investigations by Grand  
20 Jury to determine the knowledge and extent of the partici-  
21 pation by the defendant Benjamin Eisenberg and others  
22 in situations wherein usurious loans and extensions of credit  
23 had been made.

24 In addition, the Grand Jury was attempting to  
25 determine the knowledge and the extent of participation by

1 dhh

2 the defendant, Benjamin Eisenberg, and others in transactions  
3 wherein extortionate means were used in the collection of the  
4 extensions of such credit.

5 Finally, the Grand Jury was attempting to determine  
6 the identities of persons to whom the defendant, Benjamin  
7 Eisenberg, and others associated with him had lent sums of  
8 money at usurious rates of interest. The testimony is  
9 as follows:

10 "Q Who owes you money?

11 "A Names, names I've forgotten. I don't pay any  
12 attention to that. This is the type of buisness you just  
13 forget about people that owe you money.

14 "Q Mr. Eisenberg, you loaned money out and if people  
15 don't pay you back you just forget about it?

16 "A That's right.

17 "Q Have you ever threatened anybody in a situation  
18 where --

19 "A No, siree, I'm not a gangster by any means and  
20 never threatened anybody in my life.

21 "Q But you stated, Mr. Eisenberg, that a number of  
22 your loans are still outstanding; is that correct?

23 "A If they are outstanding, if I get my money, I'm happy  
24 to get it. I don't go looking for it. When they have it, they  
25 come and pay me. I don't threaten anybody and I don't say you must

1 dhh

5

2 pay me or anything like that."

3 Count 2:

4 "Q You had known these people a number of years,  
5 right?

6 "A Yes, they always pay me.

7 "Q You must know their last names, some of them.

8 "A No, I don't know their last names. I don't know  
9 of anybody's last name as a matter of fact. In this business  
10 nobody gives you a last name."

11 Count 3:

12 "Q Is \$500, Mr. Eisenberg, the total amount you have  
13 ever lent any individual?

14 "A Any individual?

15 "Q Yes, at one time.

16 "A Well, I've loaned -- I've loaned somebody more than  
17 that, but a friend.

18 "Q Who?

19 "A A friend. I wouldn't divulge his name because he  
20 wouldn't like the idea.

21 "Q Mr. Eisenberg, you are going to be required to  
22 divulge his name because the Grand Jury immunity order says  
23 that you must answer all our questions.

24 Now would you please tell us the name of the  
25 individual to whom you have lent money more than \$500?

1 dhh

6

2 "A I'm trying to remember. I can't remember who I  
3 loaned \$500. It is not easy --

4 "Q I will ask you again.

5 You just indicated that you don't want to give us  
6 the name of the individual who you lent a lot of money to  
7 because he's a friend of yours.

8 What is the name of that friend?

9 "A The name of the friend?

10 "Q Yes.

11 "A Is it permissible for me -- must I tell you?  
12 Maybe this man doesn't want to know who -- he don't want his  
13 name involved. He's a married man, he has a family.

14 "Q Mr. Eisenberg, you are required because of the  
15 fact that you have been granted immunity to give us  
16 the name of that individual.

17 "A His name is Jack.

18 "Q Jack what?

19 "A I don't know his second name.

20 "Q Where does he live?

21 "A I don't know wher he lives.

22 "Q He is a friend of yours and you don't know  
23 his last name?

24 "A I know many people. I don't know their last name.  
25 I know them for many years and they never tell me their

1 dhh

7

2 last name."

3 Count 4:

4 "Q How much do you usually lend money at?

5 "A I loan these people money so they could straighten  
6 out their gambling --

7 "Q You didn't answer my question.

8 How much do you lend them money at, what rate?

9 "A I don't lend them money at any rate. I only  
10 lend them money to get them even with their debts so they  
11 can continue playing.

12 "Q Mr. Eisenberg, you never loaned anybody money  
13 and charged them interest?

14 "A If I did?

15 "Q Yes.

16 "A I possible did, yes.

17 "Q On occasions, then, you did loan people money  
18 and charged them interest?

19 "A On occasions, yes, sir, I did.

20 "Q How much interest?

21 "A I don't remember."

22 Count 5 of the indictment, as I have indicated  
23 to you, charges the defendant with obstruction of justice  
24 and I won't read the testimony that is comprised in that  
25 count at this point. You will hear that testimony from the

2 trial.

3                   At this point, I would now like to tell you how  
4                   the government is going to prove that Mr. Eisenberg's responses  
5                   were false.6                   The first witness who you will hear testimony is  
7                   the foreman of the Grand Jury who will state to you that  
8                   on May 6, 1975, Mr. Eisenberg did appear before a federal  
9                   Grand Jury and took an oath to tell the truth. And he will  
10                  relate to you further the nature of the investigation  
11                  that that Grand Jury was conducting at that time, and the  
12                  purpose for which Mr. Eisenberg was called before that  
13                  Grand Jury.14                  Now, my second witness will be an individual  
15                  by the name of Robert Aronowitz. Mr. Aronowitz will testify  
16                  that on one occasion he borrowed from the defendant Benjamin  
17                  Eisenberg \$30,000 and that for a period of four weeks --  
18                  four years thereafter every single week he paid Mr. Eisenberg,  
19                  except for a couple of weeks, \$600, and that over that four-  
20                  year period he repaid Mr. Eisenberg on that \$30,000 loan in  
21                  excess of \$120,000.22                  And Mr. Aronowitz will further indicate to you  
23                  the nature of the conversations that he had with Mr. Eisenberg  
24                  relative to the arranging of that loan and how that loan  
25                  would be collected, and Mr. Aronowitz will further indicate

2 to you what Mr. Eisenberg said to him in those situations  
3 where Mr. Aronowitz was unable to come up with the money  
4 that he was required to pay Mr. Eisenberg.

5 Mr. Aronowitz will further tell you that the  
6 \$600 weekly payments they made to Mr. Eisenberg were payments  
7 that were characterized as interest on the \$30,000 loan. That  
8 is, that each \$600 payment was not reducing the principal  
9 of the loan \$30,000. He will tell you that Mr. Eisenberg  
10 indicated that the only way the \$30,000 loan can be eliminated  
11 would be by paying \$30,000 in one lump sum together with  
12 the \$600 interest payment for that week.

13 You will further here, as a second witness, Mr.  
14 Michael Dubler. Mr. Dubler will testify to you that on one  
15 occasion he borrowed \$1,000 from Mr. Eisenberg, and that  
16 Mr. Eisenberg set the terms of that \$1,000 loan, such that  
17 Mr. Dubler was to pay back Mr. Eisenberg over a ten-week  
18 period \$120 every week.

19 So that over this ten-week period Mr. Eisenberg  
20 received the \$1,000 loan back plus \$200 which was  
21 characterized as interest. And Mr. Dubler will further  
22 testify to you that on several occasions Mr. Eisenberg  
23 screamed at him and threatened him that if he didn't pay  
24 back that loan, he would be in trouble.

25 Now, ladies and gentlemen, you will hear certain

2 testimony, about Mr. Aronowitz and his background which  
3 will indicate to you that Mr. Aronowitz is not the most  
4 upstanding citizen that you could conceive of. But, ladies  
5 and gentlemen, this will be brought out on my direct examination  
6 of Mr. Aronowitz. But I want to advise you, ladies  
7 and gentlemen, that despite the --

8 MR. WASHOR: Objection.

9 THE COURT: Never mind your advice. The advice  
10 will come from the evidence. Maybe that was just an unfortunate  
11 use of language. Just go on and say what you want  
12 to prove.

13 MR. SPEISER: Your Honor, ladies and gentlemen,  
14 you should not be distracted by Mr. Aronowitz's revelation  
15 of his past history.

16 MR. WASHOR: Objection.

17 THE COURT: The objection is overruled.

18 Have you anything further to say to the jury?  
19 The jury will understand that the purpose of an opening  
20 statement is not to argue the case. That will come at the  
21 end of the case. The purpose of an opening statement is  
22 to give you a roadmap, an outline, of what the lawyer intends  
23 to prove. Whether he has proved it and what it means and  
24 how you evaluate the witness' testimony will be a subject  
25 that we will discuss at the end of the case.

2 Is there anything else you want to call to the  
3 jury's attention?

4 MR. SPEISER: Ladies and gentlemen, I submit  
5 to you that after you heard the testimony, both Mr. Dubler  
6 and Mr. Aronowitz and the circumstances surrounding those  
7 loans, that you will understand in your eyes and in your mind  
8 that Mr. Eisenberg was answering falsely and was lying  
9 when he said he didn't remember the names of the individuals  
10 who he lent money to or that he never threatened any of  
11 these individuals. Thank you very much.

12 THE COURT: All right, Mr. Washor.

13 MR. WASHOR: Your Honor, we will exercise our right  
14 not to address the jury at this time.

15 THE COURT: All right, ladies and gentlemen,  
16 that concludes the opening statements. I will now excuse  
17 you for luncheon. Please return so that we can resume  
18 at 2 o'clock.

19 This is room 905 on the 9th floor and I think  
20 that you know how to get to the jury room from the elevators.  
21 You are now excused.

22 (Jury excused.)

23 MR. WASHOR: Your Honor, will I be able to  
24 address the Court in the absence of the jury?

25 THE COURT: Yes. We will wait a minute.

2 MR. WASHOR: Your Honor, I would ask the Court  
3 to instruct counsel on the nature and manner of how we are  
4 to put the basis of our objections the record. I recognize  
5 that you don't tolerate long speeches or wish the grounds  
6 of the objection to be stated in the presence of the jury.

7 THE COURT: No, that is not quite it. An objection  
8 should set forth in legal terms what the objection is.  
9 It shouldn't contain evidentiary language.

10 MR. WASHOR: I appreciate your admonishment.

11 Your Honor, I would request that any material  
12 that would reflect improprieties or any immoralities, con-  
13 convictions, criminal records of any of the witnesses be given  
14 to counsel at this juncture.

15 I didn't know the names of the witnesses until  
16 the time that the 3500 material was produced. I was not  
17 given that opportunity; as a result of that fact to subpoena  
18 any FBI records or records from state investigative powers  
19 that would reflect prior involvements.

20 THE COURT: Have you got a rap sheet for the  
21 witnesses that are involved?

22 MR. SPEISER: I don't have a rap sheet for the  
23 witnesses involved. I can state to the Court and to Mr.  
24 Washor the only conviction that exists on the part of Mr.  
25 Aronowitz that I was referring to. I will be glad to supply

1 dhh

13

2 them with that.

3 THE COURT: All right, supply that.

4 MR. WASHOR: I'm sorry, I didn't hear.

5 THE COURT: He said he will be glad to supply it  
6 to you. Glad or not, he will supply it. What else?7 MR. WASHOR: In light of the fact that I still  
8 have reading material would the Court permit the courtroom  
9 to stay open during the lunch hour so that I can accomplish  
10 that without delay?11 THE COURT: That's a subject you can work out  
12 with the clerk. But I'm glad he will be glad to accommodate  
13 you.14 MR. SPEISER: May I make a statement on the record  
15 as to the lateness of my handing over the 3500 material  
16 to Mr. Washor?17 THE COURT: I don't believe that is necessary.  
18 You were not legally late. It is a practical imposition  
19 on the trial to wait until a jury is impaneled or a case is  
20 going to go forward.

21 All right, 2 o'clock, gentlemen.

22

23 (Luncheon recess)

24

25

## 2 AFTERNOON SESSION

3 2 P.M.

4 (Jury present.)

5 MR. SPEISER: At this time, your Honor, the govern-  
6 ment would like to offer into evidence Government's Exhibit  
7 No. 1, which is a stipulation which has been entered into  
8 between counsel for the defendant and myself.

9 (Government's Exhibit 1 received in evidence.)

10 MR. SPEISER: I shall now read from Government's  
11 Exhibit 1, which is a stipulation that has been entered into  
12 between Mr. Washor, attorney for Mr. Eisenberg and myself.13 (Mr. Speiser read to the jury from Government's  
14 Exhibit 1 in evidence.)15 MR. SPEISER: At this time, your Honor, the  
16 government would offer into evidence Government's Exhibit  
17 No. 2, which is the Grand Jury transcript which has been  
18 provided by Mr. Blitz, and which he has indicated and which  
19 the parties have stipulated to has been a complete and ac-  
20 curate version of the testimony of Mr. Eisenberg.

21 THE COURT: All right.

22 (Government's Exhibit 2 received in evidence.)

23 MR. SPEISER: The government will call as its  
24 first witness Charles Fink.

2 C H A R L E S E. F I N K, called as a witness, having  
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. SPEISER:

6 Q Mr. Fink, how are you employed?

7 A I'm retired. I was formerly employed by the  
8 Defense Contract Administration.

9 Q Mr. Fink, I would like to direct your attention  
10 to February 19, 1975, and ask you whether on that date  
11 you were selected to serve as a member of a federal Grand  
12 Jury in the Southern District of New York?

13 A I was.

14 Q Did you hold a position on that Grand Jury?

15 A I did.

16 Q Would you please state that position?

17 A Foreman.

18 Q Who appointed you to that position?

19 A I believe it was Federal District Court Judge  
20 Eisenstein.

21 Q Directing your attention to May 6, 1975, did an  
22 individual by the name of Benjamin Eisenberg appear before  
23 your Grand Jury and testify before your Grand Jury?

24 A Yes, he did.

25 Q Do you see Benjamin Eisenberg here today?

1 dhh

Fink-direct

16

2 A Yes, I do.

3 Q Would you please point him out.

4 MR. WASHOR: I will acknowledge it is the defendant,  
5 your Honor.6 THE COURT: You may point him out. Mr. Frank, where  
7 is he? Where is Eisenberg? Do you see him in the courtroom?

8 A I think he charged the jury. Eisenstein.

9 THE COURT: We are talking about Eisenberg,  
10 Benjamin Eisenberg. Do you see Benjamin Eisenberg in the  
11 courtroom?

12 THE WITNESS: No, I don't.

13 MR. WASHOR: Your Honor, notwithstanding that--

14 THE WITNESS: Oh, I got mixed up.

15 THE COURT: What did you think I was asking you?

16 THE WITNESS: I thought you asked me about the judge.

17 THE COURT: You are talking about Judge Edelstein.  
18 I am talking about Benjamin Eisenberg.

19 THE WITNESS: I do see him in this courtroom.

20 THE COURT: Which gentleman is he?

21 THE WITNESS: The gentleman on the right, my right.

22 THE COURT: Very good.

23 Q Mr. Fink, did you administer an oath to Benjamin  
24 Eisenberg before he testified?

25 A Yes, I did.

1 dhh

Fink-direct

17

2 Q Do you recall what that oath was?

3 MR. WASHOR: Objection.

4 THE COURT: You may answer whether you recall  
5 what the oath was. Do you recall what it was? Just yes or  
6 no.

7 A Yes.

8 Q Can you state that oath?

9 A Do you solemnly swear --

10 MR. WASHOR: Objection.

11 THE COURT: Overruled. Go ahead.

12 A Do you solemnly swear the testimony you are about  
13 to give to this Grand Jury in the matter pending before  
14 it is the truth, the whole truth and nothing but the the  
15 truth, so help you God?

16 Q Did Mr. Eisenberg respond to that oath?

17 A He did. He said "I do."

18 Q Mr. Fink, who was the government attorney questioning  
19 Mr. Eisenberg on May 6, 1975?

20 A Mr. Speiser and Mr. Eberhardt.

21 Q Mr. Fink, in connection with what particular  
22 type of investigation did Benjamin Eisenberg appear as  
23 a witness?

24 A To determine the violation of federal --

25 Q Mr. Fink, let me --

1 dhh

Fink-direct

18

2 cross  
2 THE COURT: Just a minute.

3 MR. WASHOR: Excuse me, your Honor, I object.

4 THE COURT: Please. Just let me run the courtroom,  
5 will you?

6 THE WITNESS: Federal criminal --

7 THE COURT: Go ahead.

8 THE WITNESS: Prohibiting gambling, racketeering,  
9 loan sharking, extortion and other crimes.10 Q Mr. Fink, what was the purpose of Benjamin Eisenberg's  
11 being called as a witness before your Grand Jury?

12 MR. WASHOR: Objection, your Honor.

13 THE COURT: Overruled.

14 A To determine if Mr. Eisenberg possessed any  
15 information pertaining to the lending of moneys by high  
16 interest by him or third parties, and the use of force  
17 by these third parties to collect these moneys.

18 Q Thank you very much, Mr. Fink.

19 MR. SPEISER: I have no further questions.

20 THE COURT: Any cross?

21 MR. WASHOR: With your Honor's permission.

22 CROSS-EXAMINATION

23 BY MR. WASHOR:

24 Q Mr. Fink, was Mr. Eisenberg a target of that particula  
25 Grand Jury investigation?

2 redirect

2 MR. SPEISER: Objection, your Honor.

3 THE COURT: Overruled. Do you know what "a target"  
4 means?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. You may answer his question.

7 A As I recall, I think he was. I'm not --

8 Q Thank you, sir.

9 MR. WASHOR: No further questions.

10 THE COURT: Anything else?

## 11 REDIRECT EXAMINATION

12 BY MR. SPEISER:

13 Q Mr. Fink, can you explain to the jury what you  
14 mean by the fact that Mr. Eisenberg was a target of the Grand  
15 Jury investigation?

16 A I believe his name was brought up by two witnesses.

17 Q Thank you very much, Mr. Fink.

18 THE COURT: Is what you understood by the word  
19 "target"?

20 THE WITNESS: Yes, sir.

21 THE COURT: In other words, that his name had been  
22 mentioned by two witnesses and you wanted to find out if  
23 he had any knowledge on the subject matter?

24 THE WITNESS: That's right, sir.

25 THE COURT: Were you at that time seeking to

1 dhh Fink-recross 20

2 obtain information that would indict him?

3 THE WITNESS: We were asking him for information.

4 THE COURT: You were asking for information?

5 THE WITNESS: Yes.

6 THE COURT: Were you asking him for information

7 about himself or asking him for information of what he knew?

8 THE WITNESS: of what he knew.

9 THE COURT: All right. Step down.

10 MR.WASHOR: Your Honor, with the Court's permission.

11 THE COURT: Go right ahead.

12 RECROSS EXAMINATION

13 BY MR. WASHOR:

14 Q Mr. Fink, didn't you ask Mr. Eisenberg if he

15 were a bookmaker?

16 MR. SPEISER: Objection, your Honor, Mr. Fink

17 didn't ask any questions at all.

18 THE COURT: What's that?

19 MR. SPEISER: Mr. Washor asked Mr. Fink if he

20 asked Mr. Eisenberg--

21 THE COURT: Mr. Fink would be in the best position

22 to know that, wouldn't he?

23 THE WITNESS: No.

24 Q Is it not a fact, sir, that Mr. Eisenberg was

25 asked if he were a bookmaker in that Grand Jury?

1 dhh

Fink-recross

21

2 A I'm sorry, I can't recall that.

3 Q Do you recall whether or not Mr. Eisenberg  
4 was asked if he was a shylock and loaned money to people  
5 at interest rates above the legal rate?

6 A If he was asked?

7 Q Do you recall whether or not Mr. Eisenberg was  
8 asked if he was a shylock?

9 A I'm sorry, I don't recall.

10 MR. WASHOR: Would the Court bear with counsel just  
11 one moment, please?12 Q Do you recall whether or not Mr. Eisenberg  
13 during that Grand Jury proceeding was asked questions  
14 about his own personal illegal conduct?

15 A Your Honor, may I make a statement, please?

16 THE COURT: No, all he wants to know --

17 THE WITNESS: I don't recall that.

18 THE COURT: That's all. There is nothing wrong with  
19 that.

20 THE WITNESS: It is so long ago.

21 THE COURT: Then just tell him that. You don't  
22 remember. The Grand Jury transcript, testimony, is here,  
23 and it's been marked in evidence as Government's Exhibit 2.

24 THE WITNESS: That's right.

25 Q The last question, Mr. Fink.

1 dhh

Fink-recross  
Giel-direct

22

2 Do you recall Mr. Eisenberg admitting before that  
3 very Grand Jury that he was a shylock, a bookmaker and  
4 a gambler?

5 A I don't recall.

6 Q Thank you, sir.

7 MR. WASHOR: No further questions.

8 THE COURT: Thank you. You may step down.

9 (Witness excused.)

10 MR. SPEISER: At this time the government would  
11 call Kenneth Giel.

12

13 K E N N E T H A. G I E L, called as a witness,  
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SPEISER:

17 Q Mr. Giel, how are you employed?

18 A I'm currently employed as a special agent with  
19 the Federal Bureau of Investigation.

20 Q How long have you been so employed?

21 A For approximately five years.

22 Q Mr. Giel, I would like to present to you Exhibit  
23 No. 2 and ask you to turn to those pages that I direct  
24 you to turn to and I will read certain questions --

25 MR. WASHOR: I object to this procedure, your Honor.

2 THE COURT: I don't know what the procedure is.

3 Your objection is premature. Go ahead. After you do what?

4 MR. SPEISER: I want Mr. Giel to turn to certain  
5 pages that I indicate him to turn to in the transcript of  
6 Mr. Eisenberg's testimony and I want to read certain of  
7 Mr. Eisenberg's testimony into the record before the court,  
8 and I will read the questions and Mr. Giel will read the  
9 responses.

10 THE COURT: That's a convenient way of reading  
11 the transcript and I will allow it. It will help us understand  
12 it.

13 You understand that this witness is here only to  
14 be a person in the capacity of the responder to the questions.  
15 He himself was not answering the questions, but in order  
16 for you to get it in question and answer form, through  
17 your ears best, this is a convenient way of doing it and you  
18 may so proceed.

19 MR. WASHOR: Your Honor, would you later on permit  
20 me to put on the record--

21 THE COURT: I don't know anything about later on.  
22 Just do what we are doing right now. Don't anticipate.

23 MR. WASHOR: Judge Pollack, I don't want to interfere  
24 I wish to state the grounds of the objection. I don't wish  
25 to interrupt this procedure since you have ruled and I don't

2 ask to do it in the presence of the jury.

3 THE GROUND: The grounds?

4 MR. WASHOR: That's correct.

5 THE COURT: Write them out and send them up.

6 Write them out on a piece of paper.

7 Q Mr. Giel, I would like you to turn to page 26 of  
8 that transcript.

9 THE COURT: This is the transcript that is in  
10 evidence; is that right?

11 MR. SPEISER: Yes, your Honor.

12 THE COURT: And you are just doing this for the  
13 convenience of calling the jury's attention to the content  
14 of certain testimony, and this witness is not here testifying  
15 as a witness, he is just here as your witness to assist  
16 you in reading.

17 MR. SPEISER: Correctly stated, your Honor.

18 THE COURT: Go ahead.

19 A That was page 26?

20 Q Yes, Mr. Giel. I am going to begin reading on  
21 line 23.

22 "Q Mr. Eisenberg, what bars do you go to?

23 "A Now? I don't go any more.

24 "Q What bars did you go to at the time you met these  
25 individuals to lend the money?

2 "A What bars did I go to?

3 "Q Yes.

4 "A At the time there was the Mayfair Bar at 47th  
5 Street. I used to go there very often."

6 THE COURT: This document is marked Court's Exhibit  
7 1. The objection is overruled.

8 (Court's Exhibit 1 marked.)

9 Q Mr. Giel, I would like you to turn to page 33.

10 THE COURT: Mr. Speiser, don't forget that the  
11 purpose of what you are doing here is to call the jury's  
12 attention to something. If you keep your head down and  
13 mutter to yourself, they're not going to hear what you are  
14 saying and they're not going to understand what the witness  
15 is responding.

16 MR. SPEISER: Thank you, your Honor.

17 Q On page 33, Mr. Giel, I'm going to begin on line 21.

18 "Q In the number of years, that is, between 2 and 15,  
19 that you may have been lending money to individuals at rates  
20 of interest, can you please tell the Grand Jury one specific  
21 instance where you met an individual at a specific place  
22 to collect on one of those debts?

23 "A As a specific place?

24 "Q Yes.

25 "A On 40th and Broadway.

2 "Q Who?

3 "A A fellow by the name of Lefty."

4 MR. WASHOR: Objection to the raising of the voice.

5 THE COURT: Overruled. Just keep a low key and  
6 talk in a monotone, please. Go ahead.

7 Q "Q When?

8 "A Maybe six years ago."

9 Q Mr. Giel, I would ask you to continue on page 34  
10 and I will begin reading at line.11 "Well, I haven't been coming to the City of New  
12 York for quite a while and I actually don't go around  
13 collecting money because I don't have" --

14 A Counsel, according to the transcript --

15 Q You are right. Excuse me. I would like to strike  
16 that, I apologize.17 I would like you to turn, Mr. Giel, to page 38  
18 and I will begin reading at line 25.19 THE COURT: Mr. Speiser, I am going to make a  
20 suggestion for everybody's sake. You take your papers  
21 and get over here in front of the jury. Read the questions  
22 that you want to ask and answer the questions as they  
23 appear on there and just forget Mr. Giel for a minute.24 My suggestion would be that you start from the  
25 beginning because up to now I think that we have had a little

1 dhh Giel-direct 27  
2 Dubler-direct  
3 difficulty in understanding what you are doing. When you  
4 read a question, just say question and then say answer.  
5 We will know that somebody was asking the questions  
and Mr. Eisenberg was answering.

6 MR. SPEISER: You would like me to begin all over?

7 THE COURT: Yes.

8 You just do nothing.

9 THE WITNESS: Yes.

10 (Mr. Speiser read to the jury from Government's  
11 Exhibit 2 in evidence.)

12 MR. SPEISER: Your Honor, I have no questions of  
13 Mr. Giel at this time.

14 THE COURT: All right. You may step down.

15 (Witness excused.)

16 THE COURT: Anything else?

17 MR. SPEISER: I would like to call Michael Dubler  
18 as a witness.

19

20 M I C H A E L D U B L E R, called as a witness, having  
21 been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SPEISER:

24 Q Mr. Dubler, how are you employed?

25 A Salesman.

2 Q Mr. Dubler, do you know Benjamin Eisenberg?

3 A Yes.

4 Q Do you see him here today?

5 A Yes.

6 Q Would you please point him out?

7 A That's him.

8 Q Mr. Dubler, have you ever met the defendant Benjamin  
9 Eisenberg?

10 A Yes.

11 Q Do you recall when you did meet Mr. Eisenberg?

12 A About three and a half years ago.

13 Q Where did you meet Mr. Eisenberg at that time?

14 A In the store that I was employed in. The place  
15 of business.

16 Q Where was that store located?

17 A Manhattan, Third Avenue and 60th.

18 Q Do you recall the circumstances surrounding your  
19 meeting Mr. Eisenberg?

20 A Yes.

21 Q Can you relate those to the jury, please?

22 A I needed to borrow some money and I got an intro-  
23 duction to him.

24 MR. WASHOR: I'm sorry, your Honor, I didn't  
25 hear that clearly.

2 THE COURT: It will be read to you.

3 (Answer read.)

4 Q Mr. Dubler, I going to ask you to speak louder,  
5 if you can.

6 A Yes.

7 Q Mr. Dubler, who introduced you to Mr. Eisenberg?

8 A A mutual friend named Bernie.

9 Q Did Bernie personally introduce you to Mr.  
10 Eisenberg?

11 A No. He said he knew someone and he would contact  
12 me.

13 Q Did this someone eventually contact you?

14 A Yes.

15 Q This person, did he identify himself on the tele-  
16 phone?

17 A Yes.

18 Q How did he identify himself?

19 A "This is Benny, Bernie's friend." Something like  
20 that.

21 Q Do you recall the conversation that transpired,  
22 if any occurred, during that telephone conversation?

23 A No. Not in the conversation. He said he would  
24 come down and meet me.

25 Q Did Mr. Eisenberg in fact come down and meet you?

2 A Yes.

3 Q Where did he meet you?

4 A At my place of business at the time.

5 Q Did he come down to meet you that same day?

6 A Yes.

7 Q Did he come down alone to meet you?

8 A Yes.

9 Q What type of store were you working at at the time?

10 A Stereos, retail stereo store.

11 Q Did Mr. Eisenberg come in and introduce himself  
12 to you?

13 A Yes.

14 Q Was there anyone else around at the time?

15 A There were other men in the store, but they were--  
16 I was in the back of the store.

17 Q Did you have a conversation with Mr. Eisenberg  
18 at that time?

19 A Yes.

20 Q Do you recall what was discussed during that  
21 conversation?

22 A Yes.

23 Q Can you relate that to the best of your knowledge  
24 at this time?

25 A I asked to borrow some money and subsequently

2 he loaned me some. I asked to borrow a few thousand dollars  
3 and he loaned me a thousand dollars.

4 Q You say you asked Mr. Eisenberg for a few thousand  
5 dollars but he only lent you \$1,000?

6 MR. WASHOR: Objection.

7 A Right.

8 THE COURT: Don't repeat the testimony. Go ahead.

9 Q Can you explain to the jury why Mr. Eisenberg  
10 didn't lend you the amount that you requested?

11 MR. WASHOR: Objection.

12 THE COURT: Sustained. Was there any reason for  
13 the amount that was loaned?

14 A Well, he said he didn't know me that well, and  
15 he asked me if I had some collateral. I said no. And then  
16 he wouldn't loan me the amount I asked for. He loaned me  
17 a thousand.

18 THE COURT: How much did you ask for?

19 THE WITNESS: I believe it was three.

20 THE COURT: 3,000?

21 THE WITNESS: Yes, sir.

22 THE COURT: And he loaned you a thousand dollars?

23 THE WITNESS: Yes.

24 THE COURT: Go ahead.

25 Q Did Mr. Eisenberg in fact give you the thousand

2 dollars at that initial meeting?

3 A Yes.

4 Q Did he have this thousand dollars physically with  
5 him or did he have to leave the store to get the money?

6 A No, he had it with him.

7 Q Do you remember the denominations of the money  
8 that he gave you?

9 A I think it was in hundred dollar bills.

10 Q At that time did you discuss with Mr. Eisenberg  
11 the terms surrounding the repayment of the money to Mr.  
12 Eisenberg?

13 A Yes.

14 Q Can you relate to the jury that discussion?

15 A I would pay 120 a week for ten weeks.

16 Q What was the \$20 characterized as, if at all, by  
17 Mr. Eisenberg that you were to repay him every week?

18 MR. WASHOR: Objection.

19 THE COURT: Was the \$20 characterized by Mr.  
20 Eisenberg?

21 THE WITNESS: It wasn't specifically pointed out  
22 as anything, just 120 a week for ten weeks.

23 THE COURT: Go ahead.

24 Q Did you in your own mind at that time understand  
25 what that \$20 was to be characterized as?

2 MR. WASHOR: Objection.

3 A Yes.

4 THE COURT: Sustained.

5 Q Did Mr. Eisenberg at that time indicate to you  
6 how you were to repay him?

7 A Just that it would -- at that time I don't think  
8 it was pointed out how. It was just that it would be picked  
9 up. They would contact me.

10 Q Did Mr. Eisenberg indicate who would contact you?

11 A Not at that time.

12 THE COURT: Look, why don't you tell us what  
13 happened on that occasion so that we don't have to --

14 THE WITNESS: He loaned me the thousand dollars  
15 and he said that he would contact me.

16 THE COURT: Speak up, this jury wants to hear it.

17 THE WITNESS: He loaned me the thousand dollars  
18 and he said that he would contact me every Friday, I believe,  
19 the end of the wee'-, and -- or it would be picked up.

20 I didn't go into specifics. I had the money.  
21 It was his thing to collect it from me.

22 THE COURT: All right.

23 Q Following that conversation that you had with  
24 Mr. Eisenberg, did anyone ever come around to collect  
25 any money from you?

2 A Yes, at the end of the week another party came  
3 down to pick up the money.

4 Q Did you know who that party was at the time  
5 he collected this money from you?

6 A No. Just identified himself as Benny's friend, I  
7 believe.

8 Q Did you in fact give him the \$120?

9 A Yes.

10 Q Where did you meet him to pay him the money?

11 A In the store I was working at, that same store.

12 Q How long did you continue paying the \$120?

13 A For four or five weeks.

14 Q On each of those occasions, those four or five  
15 weeks, who came to collect the money?

16 A This other party, Benny's friend.

17 Q Did you subsequently learn who this other party was?

18 A Yes.

19 Q Who did you determine that to be, and how did  
20 you find that out?

21 MR. WASHOR: Objection.

22 THE COURT: First tell us what the name is.

23 THE WITNESS: The name of the party?

24 THE COURT: Yes.

25 A I never knew him by name.

2 THE COURT: What identification did you ascribe  
3 to him?

4 THE WITNESS: I don't understand.

5 THE COURT: How do you identify him? The lawyer  
6 wants to know who this was.

7 THE WITNESS: I found out that it was Benny's brother.

8 THE COURT: Benny's brother?

9 THE WITNESS: Right. In conversation that came  
10 up. But not at that time, later on.

11 THE COURT: Do you know what Benny's brother's  
12 name was?

13 THE WITNESS: No, sir.

14 THE COURT: All right.

15 Q Who told you that this was Benny's brother?

16 MR. WASHOR: Objection.

17 THE COURT: Overruled.

18 A Benny mentioned it in a phone call to me "Was  
19 my brother there" That's the only reason I knew it.

20 Q Mr. Dubler, what happened after the four or  
21 five weeks that you stated that you paid \$120 a week in  
22 repayment of this loan?

23 A I couldn't pay any more. I subsequently joined  
24 an organization called Gamblers --

25 MR. WASHOR: Objection.

2 THE COURT: You say you couldn't pay any more?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Next question.

5 Q Did you have any contact from Mr. Eisenberg  
6 after you couldn't pay any more?

7 A Yes.

8 Q Do you recall you called Mr. Eisenberg or Mr.  
9 Eisenberg called you?

10 A He called me.

11 Q Did you ever have Mr. Eisenberg's telephone number?

12 A No.

13 Q You never had his telephone number at home?

14 A No.

15 Q Did you ever have his telephone number at work?

16 A No.

17 Q Did you know where Mr. Eisenberg worked?

18 A No.

19 Q Did you know what Mr. Eisenberg did for a living?

20 A No.

21 Q What did Mr. Eisenberg say to you on the telephone  
22 when he contacted you, when you told him you couldn't  
23 pay \$120 a week any more?

24 MR. WASHOR: Objection.

25 THE COURT: What, if anything, was said to you in the

2 phone call that you say you had?

3 A He cursed me out in every possible way.

4 THE COURT: What else?

5 THE WITNESS: And he said that I have to; that I  
6 have to pay him.

7 THE COURT: What did you say?

8 THE WITNESS: I couldn't, and I wanted to work  
9 out som' thing.

10 THE COURT: What did he say?

11 THE WITNESS: At that point he said I'd pay him  
12 a certain amount of money; that was what I understood  
13 was a miss, that was penalty at that week. And the next  
14 week I would continue to pay.

15 THE COURT: What was the amount of the penalty?

16 THE WITNESS: \$22, I believe, \$20, something like  
17 that.

18 THE COURT: The penalty was for not paying \$120  
19 that was due that week?

20 THE WITNESS: Yes, sir.

21 THE COURT: What else was said in that conversation?

22 THE WITNESS: That was all that was said then.

23 After, you know, he put me down, I should say, cursed me  
24 out.

25 THE COURT: Go ahead.

2 Q Mr. Dubler, you characterized that penalty as a  
3 miss. What is meant by a miss?

4 MR. WASHOR: Objection.

5 THE COURT: What did you mean when you said "miss"?

6 THE WITNESS: Directed at me? Oh, I missed that  
7 payment that week. I missed paying.

8 THE COURT: You missed means you failed to pay?

9 THE WITNESS: I failed to pay the 120.

10 THE COURT: And you had to pay \$22 because you  
11 failed to pay on that Friday?

12 THE WITNESS: Yes, sir.

13 THE COURT: So you had to pay for that week \$142?

14 THE WITNESS: No, the \$20 was just the penalty  
15 and then it would continue. There would be ten weeks.  
16 That wee didn't count. If I paid 5 and then I paid the  
17 \$20, the next week I would still -- the five. The \$20 was the  
18 penalty for not paying that week. I didn't pay -- it was  
19 just \$20 for not paying the 120.

20 Q Mr. Dubler, who did you pay this \$20 to?

21 A The fellow that picked up the 120 each week, Benny's  
22 brother.

23 Q Where did you pay him this \$20?

24 A In my store.

25 Q When this person came around to collect the money

2 from you, did he come by himself?

3 A Yes.

4 Q How many weeks did you continue paying him \$20?

5 A Just the one week.

6 Q What happened the subsequent week?

7 A I wanted to -- I couldn't again, and I wanted  
8 to renegotiate or --

9 MR. WASHOR: Objection.

10 THE COURT: You couldn't pay again?

11 THE WITNESS: Right.

12 THE COURT: Then did you have some conversation  
13 with the man?

14 THE WITNESS: Yes.

15 THE COURT: What was the conversation and how  
16 did it take place?

17 THE WITNESS: At the time he came into the store  
18 and he again called me everything he could possibly call  
19 somebody, and then he left. At that time. And then he called  
20 me back.

21 Q When Mr. Eisenberg called you back, did you  
22 have a conversation with him at that time?

23 A Yes.

24 Q What was said in that conversation?

25 A He wanted -- I wanted to change the payment. I

2 wanted to -- I couldn't afford to pay that kind of money  
3 each week with what I owed, and I wanted to work out  
4 a more -- something I could handle, a better payment arrange-  
5 ment of what I could handle.

6 Q Did you tell Mr. Eisenberg you wanted to meet  
7 with him to discuss that?

8 A Yes.

9 MR. WASHOR: Objection.

10 THE COURT: Just ask the witness what occurred.  
11 Come on, tell us what happened on that occasion.

12 THE WITNESS: I wanted to make out a payment. I  
13 wanted to pay --

14 MR. WASHOR: Objection.

15 THE COURT: Is this what you told him?

16 THE WITNESS: Yes, I told him --

17 MR. WASHOR: I withdraw my objection.

18 THE WITNESS: I told him I wanted to pay -- I  
19 couldn't afford to pay that and I wanted to pay \$50 a month  
20 against what I owed him.

21 And he subsequently called me everything in the  
22 book, and then hung up and then called back, I believe,  
23 and then -- I'm not sure if he came into the store again  
24 after that. I don't know if he came in before or after that,  
25 and eventually we got to an agreement.

2 THE COURT: What was the understanding?

3 THE WITNESS: The understanding that I would pay  
4 50 a month, but he had changed how much money I owed him.  
5 But that wasn't of any interest to me. I was just interested  
6 in knowing that I would only have to pay 50 a month, not  
7 120 a week. What this paid and how much I owed him in  
8 addition to it, and whatever the figures were, but I was  
9 concerned strictly with how much I had to pay a month, what  
10 I could afford to pay, not how long I would have to pay it  
11 or what I had to -- in addition to it.

12 Q Mr. Dubler, in connection with your last meeting  
13 with Mr. Eisenberg, where did that take place?

14 A In the store.

15 Q What was discussed during that conversation?

16 A Well, like I say, he cursed me out and he frightened  
17 me.

18 MR. WASHOR: Objection.

19 THE COURT: What did he say or do?

20 The objection is sustained.

21 What did he say or do?

22 THE WITNESS: He said I better have it and I better  
23 do this and he wouldn't accept anything else.

24 And at one point, what frightened me, he said  
25 someone would come down and see me, which I didn't know what--

2 I mean, I was afraid. I mean, I wasn't making the agreement  
3 and I owed him money and I was afraid. He yelled at me  
4 and I was afraid. He frightened me.

5 Q Mr. Dubler, did Mr. Eisenberg have your telephone  
6 number at home?

7 A No.

8 Q How much did you pay Mr. Eisenberg in total?

9 A About 800.

10 Q Did Mr. Eisenberg tell you that he had lent money  
11 to other people?

12 MR. WASHOR: Objection.

13 THE COURT: Sustained. Did you talk about any  
14 other people with Mr. Eisenberg?

15 THE WITNESS: In the initial -- when I first  
16 met him, when he first loaned me the money, he mentioned--  
17 he impressed me with money he had loaned out.

18 THE COURT: What did he say in substance?

19 THE WITNESS: Well, he said -- the thousand dollars  
20 was nothing. In other words, he showed me that the loaning  
21 of the thousand dollars was peanuts. That he didn't know  
22 me -- you know, I've dealed in much bigger figures, but, you  
23 know, this was just a starter, something like that.

24 THE COURT: Did he say anything about any other  
25 transactions he was having or had?

1 dhh

Dubler-direct  
cross

43

2 THE WITNESS: No. Nothing specific.

3 Q Mr. Dubler, throughout your entire conversation  
4 that you had with Mr. Eisenberg, did you ever tell Mr.  
5 Eisenberg that your name was Jack?

6 A No.

7 Q What name did you always use with Mr. Eisenberg  
8 when you had conversations with Mr. Eisenberg?

9 A Mike.

10 MR. SPEISER: I have no further questions.

11 THE COURT: Is there any cross-examination?

12 CROSS-EXAMINATION

13 BY MR. WASHOR:

14 Q Was the name of the store or the place that  
15 you worked in Churchill's?

16 A Yes, sir.

17 Q Were you known to Mr. Eisenberg as Mike from  
18 Churchill's?

19 A Do I know him as that?

20 Q No, when he met and spoke to you, did he talk  
21 to you as Mike from Churchill's?

22 A Right.

23 Q Am I correct?

24 A I don't know if he stated the store, but Mike,  
25 he knew me as Mike.

2 Q Was there a formal introduction when you first  
3 met Mr. Eisenberg whereby someone said "I want you to meet  
4 Mr. Dubler, Michael Dubler"?

5 A No, sir.

6 Q As a matter of fact, when you spoke to him for  
7 the first time it was on the telephone, am I correct?

8 A Yes, sir.

9 Q And you spoke to each other on a first name basis,  
10 am I correct?

11 A Yes, sir.

12 Q And would it be fair to say that you didn't  
13 even know his last name at that time; am I correct?

14 A Yes, sir.

15 Q Would it be fair to say that all during the  
16 entire transactions that you had with Mr. Eisenber g you  
17 didn't know his last name?

18 A Yes.

19 Q And it would be fair to say that he never called  
20 you by your last name, am I correct?

21 A Yes, sir.

22 Q And it would be fair to say that he didn't  
23 have your telephone number?

24 A Yes, sir.

25 MR. SPEISER: I object to that, your Honor.

2 THE COURT: Overruled.

3 Q Would it be fair to state that you never gave him  
4 your home address?

5 A Yes, sir.

6 Q You say you were introduced by a person by  
7 the name of Bernie, am I correct?

8 A Yes.

9 Q Who is Bernie?

10 A Bernie was a man connected with bookmaking.

11 Q Was he your bookmaker, sir?

12 A Yes.

13 Q Did you bet to him?

14 A Yes.

15 Q Was he one of several bookmakers that you had been  
16 gambling with?

17 A Yes.

18 MR. SPEISER: Objection.

19 THE COURT: Overruled.

20 THE WITNESS: Yes.

21 Q Is it not a fact, sir, that you were seeking  
22 a loan of money because of the trouble financially that  
23 you found yourself in with the bookmakers?

24 A Yes.

25 Q What was Bernie's last name at the time?

2 A I idn't know it.

3 Q Isn't it a fact, sir, that Bernie personally  
4 introduced you to Mr. Eisenberg?

5 A No.

6 Q Isn't it a fact that Bernie, as you knew him then,  
7 said "I can't give you the money unless Bernie okays you"?

8 A No.

9 Q Well, did Mr. Eisenberg ask you to sign a note?

10 A No.

11 Q Did he ask you for your license or registration,  
12 any automobiles?

13 A No.

14 Q Did he ask where you live?

15 A No.

16 Q Did he ask you for any kind of security?

17 A He mentioned something about collateral.

18 Q Did you give him any?

19 A I had none.

20 Q Did you offer him anything?

21 A No, sir.

22 Q Didn't you have the best collateral at that time  
23 by the name, a fellow by the name of Bernie?

24 MR. SPEISER: Objection, your Honor.

25 THE COURT: That's a characterization. I will

2 sustain that.

3 Q Is it not a fact, sir, that you told Mr. Eisenberg  
4 "Don't worry about it, I'm okay, Bernie recommended you  
5 to me" or vice versa?

6 A I told him -- I might have told him I was okay,  
7 yes, but I never said Bernie recommended me. He knew Bernie  
8 recommended me to him.

9 Q Bernie is the one who enlisted Mr. Eisenberg  
10 on your half?

11 A Yes, but I never used Bernie as a recommendation  
12 for me. He said I was okay. He just gave me the introduction.

13 Q Didn't Mr. Eisenberg say "The only reason I will  
14 loan you the money is because I know Bernie"?

15 A He might have at the time. I don't totally recall.

16 Q Can you recall approximately when you met and  
17 borrowed money for the first time from Mr. Eisenberg?

18 A You mean the date?

19 Q Yes.

20 A It was approximately three and a half years ago.  
21 I can't recall the exact date, no.

22 Q Would that be 1971 or 1972?

23 A It would be late '71 or '72, yes.

24 Q Do you remember approximately what time of the  
25 year it was in, by month or season?

2 A I would think it was fall.

3 Q At the time you first met, when was the next time  
4 that you first had a conference with him after he loaned  
5 you the money?

6 THE COURT: You can't have a next time when he  
7 first had something. Rephrase your question.

8 Q Some time in the fall of 1972, you met Mr.  
9 Eisenberg for the very first time, correct?

10 A Yes.

11 Q When did you thereafter speak to Mr. Eisenberg  
12 after that one instance?

13 A About five weeks later.

14 Q Going back to the first instance when you met  
15 Mr. Eisenberg, he didn't intimidate you or threaten you  
16 or frighten you on that time, did he?

17 A No, sir.

18 Q Five weeks later you spoke to him on the telephone;  
19 am I correct?

20 A Yes.

21 Q You say he cursed you out.

22 A Yes.

23 Q Am I correct?

24 A Yes.

25 Q And you agreed to pay what they call a miss

2 penalty; am I correct?

3 A Yes.

4 Q He didn't intimidate you, frighten you then, did  
5 he?

6 A Yes, sir, he did.

7 Q He did?

8 A Yes.

9 Q He scared you?

10 A Yes.

11 Q Did you go to the police, sir?

12 A No, sir.

13 Q Did you go to the FBI, sir?

14 A No.

15 Q Did you go to any U.S. Attorney's office to  
16 complain?

17 MR. SPEISER: Objection.

18 THE COURT: Overruled.

19 Q Did you, sir?

20 A No.

21 Q After you were threatened on the telephone, this  
22 fellow came to pick up the \$20, the miss penalty; am I  
23 correct?

24 A Yes.

25 Q Did you have a witness present --

1 dhh Dubler-cros. 50

2 A No.

3 Q -- when the 20 was given to him?

4 A No.

5 Q Now, there cam' a time when you -- after the  
6 phone call -- met Mr. Eisenberg in the store, Churchill's;  
7 am I correct?

8 A Yes.

9 Q How much time elapsed from the telephone conversa-  
10 tion where the \$20 penalty was discussed and the time  
11 that you met Mr. Eisenberg in the store, Churchill's?

12 A Maybe a week.

13 Q And you testify that he cursed you out there?

14 A Yes.

15 Q Am I correct?

16 A Yes.

17 Q And you say he left the store; am I correct?

18 A Yes.

19 Q Do you remember what you testified on direct  
20 examination? Do you not?

21 A Yes.

22 Q He didn't threaten you at that time, did he?

23 A In the store?

24 Q That's correct.

25 A He had.

2 Q He did?

3 A Yes.

4 Q Did you call your boss over?

5 A No.

6 Q Did you call anybody over to say that a man  
7 just threatened you?

8 A No.

9 Q Did you call the police at that time?

10 A No.

11 Q Did you contact any authority in any manner or  
12 form at that time and complain that you were being threatened?13 A I was involved with an organization called Gamblers  
14 Anonymous and I discussed it with them. I had gone to them  
15 to -- for guidance.

16 Q This is after the store confrontation?

17 A I spoke to them many times about him. I was going  
18 to Gamblers Anonymous at the time.19 Q Now, sir, can you answer my question? Did you  
20 go to any of the authorities, law enforcement authorities,  
21 and complain that you were being threatened by Mr. Eisenberg?

22 A No.

23 MR. SPEISER: Your Honor, he already answered that  
24 question.

25 THE COURT: He can answer it again.

2 A No.

3 THE COURT: Go ahead with the cross-examination.

4 Q Please, the judge is talking.

5 THE COURT: Don't repeat your questions. You  
6 know, it doesn't add anything just to keep on asking the  
7 same question all over again. If you get an answer, that  
8 is it.

9 MR. WASHOR: I realize that.

10 Q Can you answer the question?

11 A No.

12 THE COURT: He's answered the question. Next  
13 question.14 Q You say after he cursed you out and walked out  
15 of the store, he called you back on the telephone: am I  
16 correct?

17 A Yes.

18 Q And he went through negotiations, am I correct,  
19 relative to reducing the payments per month?

20 A Yes.

21 Q and he acquiesced or agreed to accept \$50 a month  
22 instead of \$120 a month; am I correct?

23 A It was 120 a week.

24 Q I apologize.

25 A He agreed to accept it.

2 Q Instead of 120 a week, he agreed to accept 50 a  
3 month; am I correct?

4 A Yes.

5 Q In other words, from 120 to \$12 a week, approxi-  
6 mately?

7 A Yes.

8 THE COURT: It is 12.50 a week.

9 Q Did he ever contact you at your home?

10 A No.

11 Q Did he ever ask for the names of any members  
12 of your family?

13 A No.

14 Q Did he ever send anybody down to talk to you  
15 about the repayment of money?

16 A No.

17 Q In sum and substance, Mr. Dubler, this man  
18 threatened you, am I correct? Did he or did he not threaten  
19 you?

20 A Yes, he did.

21 Q Okay.

22 You testified in the Grand Jury in November of  
23 1973, didn't you?

24 A Yes.

25 Q November, 1973, in fact was closer in time to the

1 dhh Dubler-cross 54  
2 relationship you had to Mr. Eisenberg than it is today,  
3 am I correct, sir?

4 A Yes.

5 Q And your memory relative to the incidents, is  
6 it better today or was it better in November of 1973?

7 A It was better then.

8 Q I am going to change the line of questioning,  
9 not to confuse you.

10 Sir, there there come a time that you left  
11 the New York area?

12 A Yes.

13 Q When was that?

14 A Approximately two and a half years ago.

15 Q In relation to the last time that you had any  
16 type of financial transaction with Mr. Eisenberg, when  
17 did you leave the New York area?

18 A About a month after I made a payment, one payment--  
19 a payment to him.

20 Q Is that the \$50 that we are talking about?

21 A That's correct, yes.

22 Q So that would be possibly winter of 1972, some  
23 time there; am I correct, sir?

24 A It was in April.

25 Q April of 1972?

2 A I believe so.

3 Q And you went to Miami, am I correct?

4 A Yes.

5 Q How long were you out of the New York area,  
6 approximately?

7 A Three months.

8 Q Did you come back?

9 A Yes.

10 Q Did you see Mr. Eisenberg after that?

11 A No.

12 Q Did you have a telephone conversation with Mr.  
13 Eisenberg after that?

14 A No.

15 Q Did you see Bernie after that?

16 A No.

17 Q Did you see any bookmakers after that?

18 A No.

19 Q Would you say that Gamblers Anonymous was working  
20 for you, sir?

21 A Yes.

22 Q By the way, you owed a lot of money before you  
23 left town; am I correct?

24 A Yes.

25 Q And you didn't pay these people their full balances,

2 did you, sir?

3 A Not in full.

4 Q Did Mr. Eisenberg, after you came back after three  
5 months, did you speak to him on the telephone?

6 A No.

7 Q As a matter of fact, when you came back after  
8 three months, you went back to the very same place of  
9 business that you had first met Mr. Eisenberg, am I correct,  
10 Churchill's?

11 A Yes.

12 Q So that from the very same location in New York,  
13 am I correct, sir?

14 A No.

15 Q At a different store?

16 A Yes.

17 MR. SPEISER: Your Honor, I object to that.

18 THE COURT: Overruled.

19 Q You came back to work for Churchill's; am I correct?

20 A Yes.

21 Q Did Mr. Eisenberg meet or see you from the time  
22 that you came back to New York to the present time?

23 A No.

24 Q Did he contact you by phone from the time that  
25 you came back to New York to the present time, sir?

2 A No.

3 Q Did he, f n the time that you came back to New  
4 York to the present time, ever attempt through his brother  
5 to get the balance of the money that you owe him?

6 A No.

7 Q Now, Mr. Dubler, returning to November of 1973,  
8 when you testified in the Grand Jury, when you testified  
9 you were under oath, am I correct?

10 A Yes.

11 Q This is November, 1973, am I correct?

12 A Yes.

13 Q And you had been back from Miami or Florida since  
14 June or July of 1972, am I correct?

15 A Yes.

16 Q A year, a year and a half had gone by when you  
17 were questioned about events relative to Mr. Eisenberg;  
18 correct?

19 A I believe so.

20 Q Approximately. I realize it is not exact.

21 A Okay.

22 Q And that same hiatus of time, a year, a year and  
23 a half, in no way, in nowise were you bothered by Mr.  
24 Eisenberg; am I correct?

25 A Yes.

2 THE COURT: Please don't keep repeating what we  
3 have heard. It doesn't add anything just to repeat.

4 Q When you testified in the Grand Jury you were  
5 advised of what constitutes perjury, am I correct?

6 A Yes.

7 Q Is it a fact, sir, that on November 14, 1973,  
8 that is the very date that you testified in the Grand Jury  
9 concerning these transactions?

10 A I don't know if that was the exact date.

11 MR. WASHOR: May I have a stipulation from the  
12 government?

13 MR. SPEISER: Yes. I stipulate to the fact  
14 that Mr. Dubler did testify on November 14, 1973.

15 Q Do you remember being asked these series of  
16 questions and giving these series of answers as reflected,  
17 Mr. Speiser, on page 10, starting on line 19:

18 "Q Isn't it a fact that he got extremely upset?

19 "A Yes.

20 "Q And this was a conversation over a phone?

21 "A Right.

22 "Q And didn't Benny threaten to shoot you over  
23 the phone?

24 "A No."

25 Do you remember being asked those questions and

1 dhh Dubler-cross 59

2 giving those answers?

3 A Yes.

4 Q And was that the truth, sir?

5 A Yes.

6 Q Do you remember being asked the following series  
7 of questions and answers before the very same Grand Jury,  
8 on page 11: reflected on line 4.-- line 2.

9 "Q You are sure that he didn't use the words, any  
10 words, to the extent --

11 "A The man was extremely excited and used the most  
12 violent language you can think of for a period of maybe  
13 five minutes on the phone. Now, I don't recall if he  
14 threatened to shoot me or not. No, I don't think so, no.

15 "Q Well, I am asking you specifically.

16 "A I don't think so. I don't know. You are asking  
17 me something I can't answer for you. I don't know whether  
18 he -- I told you the conversation was heated. It was  
19 over 18 months."

20 Do you remember being asked those series of  
21 questions and giving those answers, sir?

22 A Yes.

23 Q And is it the truth?

24 A Yes.

25 Q And is that the truth?

1 dhh

Dubler-cross

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2 A That's the truth.

3 Q Have you ever had occasion where you misrepresented  
4 to any member of the Federal Bureau of Investigation?

5 A I don't understand the question.

6 Q Did you ever exaggerate or misrepresent to an FBI  
7 agent?8 THE COURT: Which is it? Which is it? What  
9 are you talking about puffing or lying?

10 Q Did you ever puff, exaggerate, to an FBI agent?

11 A Not that I can recall.

12 Q Do you remember being asked these questions  
13 under oath in the very same Grand Jury of November 14, 1973,  
14 as reflected on page 11, the following question, the  
15 following answer, line 17:16 "Q Do you recall telling the FBI during that  
17 conversation that Benny threatened to shoot you?18 "A I don't recall that. At the time when I spoke  
19 to Young, this FBI agent, I was extremely upset. He happened  
20 to hit me right at this time and I might have exaggerated.  
21 I was very distraught about the whole thing. I don't think  
22 he threatened to shoot me."23 Do you remember being asked those series of  
24 questions and giving those answers?

25 A I believe so, yes.

1 dhh

Dubler-cross

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2 Q Is that the truth, sir?

3 A Yes.

4 Q Now, from the time that you came back from Miami,  
5 to the very present day, is it not a fact that no one  
6 attempted to solicit your testimony favorable to Mr.  
7 Eisenberg?

8 MR. SPEISER: Objection, your Honor.

9 THE COURT: That calls for a conclusion.

10 Q Did anybody during the time you came back from  
11 Miami to the very present day, ever wipe out your debt  
12 to Mr. Eisenberg?

13 A No.

14 Q Did anybody say "You don't owe him any money,  
15 don't worry about it"?

16 A No.

17 Q Did anybody tell you that you could earn some  
18 money if you testified favorably in the Grand Jury on behalf  
19 of Mr. Eisenberg?

20 A No.

21 Q Would it be fair to state that you have not been  
22 coerced or bribed to help or hurt Mr. Eisenberg when you  
23 testified in the Grand Jury on November 14, 1973?

24 A That's correct.

25 Q And that was truthful statements that you gave

1 dhh

Dubler-cross

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2 at that Grand Jury, sir, correct?

3 A Yes.

4 Q Do you remember the following series of questions  
5 before the Grand Jury, and the following series of answers  
6 given by you under oath on November 14, 1973, on page 15,  
7 Mr. Speiser.8 MR. SPEISER: Your Honor, if I may make one  
9 point, just for the record, Mr. --10 MR. WASHOR: Your Honor, I object to any statement  
11 in the presence of the jury.12 THE COURT: Wasn't the Grand Jury transcript  
13 put in evidence?14 MR. SPEISER: Not of Mr. Dubler's. The only  
15 Grand Jury transcript that is in evidence is the transcript  
16 of Mr. Eisenberg.17 THE COURT: That's a technical omission. He is  
18 asking him now questions about what testimony he gave  
19 presumably supposing to contradict something he said. But  
20 I'm still waiting to hear the contradiction.21 MR. WASHOR: Your Honor, I object to that comment  
22 by the court.23 THE COURT: I am not commenting. I am merely  
24 saying you are using a document not in evidence.

25 MR. WASHOR: Your Honor, I know that.

1 dhh

Dubler-cross

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2 THE COURT: For cross-examination on a subject that  
3 was not treated in his direct testimony, and, therefore,  
4 you are using it as affirmative evidence.

5 MR. WASHOR: Your Honor, he testified on direct  
6 that this man threatened him.

7 THE COURT: Yes, that's right. Did he talk about  
8 a gun on his direct examination?

9 MR. WASHOR: He talks about threats. I am getting  
10 to that, Judge.

11 THE COURT: I know, get there quickly.

12 MR. WASHOR: Surely.

13 Q On page 15, as reflected in the following  
14 questions and answers. Do you recall being asked these  
15 questions and giving these answers, line 19:

16 "Q Do you recall him coming into the store to speak  
17 with you with respect to the money that you were behind  
18 in your payments?

19 "A Yes, yes, right.

20 "Q Isn't it a fact that he became extremely irate?

21 "A Yes.

22 "Q And didn't he make threats to kill you?

23 "A No.

24 "Q You are positive of that?

25 "A I'm not positive, I don't recall mkaing threats

4 Dubler-cross 64  
5 to kill me. I recall that all the man did was curse and  
6 make a fist and say I ought to take care of you right now,  
7 I ought to rap you, something like that. He always made  
8 a fist like he was holding it back."

9 Do you remember those questions and those answers?

10 A Yes.

11 Q And were they truthfully answered, sir?

12 A Yes, sir.

13 MR. WASHOR: I ask the Court's indulgence for  
14 one moment, please.

15 At this time may I get a stipulation that--

16 THE COURT: Please, if you want to stipulate,  
17 you just walk over there and have a conversation out of  
18 the hearing of everybody and if you get it, you get it.  
19 And if you don't get it, don't talk about it.

20 MR. WASHOR: Sure.

21 (Counsel confer.)

22 MR. WASHOR: Your Honor, with the Court's permission,  
23 may I just read a question and answer back to the witness  
24 to correct a reading mistake by myself?

25 THE COURT: Go ahead.

Q Do you remember the following question and the  
following answer before this Grand Jury:

"Q You're positive of that?

2 A I'm not positive. I don't recall making threats  
3 to kill me. I recall that all the man did was curse  
4 and make a fist and say I ought to take care of you right  
5 now. I ought to rap you now, something like that. He always  
6 made a fist like he was holding it back, but I don't recall  
7 him saying he would kill me. He once said someone will  
8 come down and see you."

9 Do you remember that question and answer, sir?

10 A Yes.

11 Q Was that the truth?

12 A Yes.

13 MR. WASHOR: With the Court's permission, the  
14 government counsel will stipulate that I have been reading  
15 from the extract of Grand Jury minutes of this witness  
16 under oath. That testimony having been perpetuated on  
17 November 14, 1973, and that that form that I am reading  
18 is an accurate transcription of those Grand Jury minutes,  
19 and that I have read accurately.

20 THE COURT: Does that conclude your examination?

21 MR. WASHOR: Yes, sir.

22 THE COURT: All right. Any redirect?

23 MR. SPEISER: Just a few questions, your Honor.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

1 dhh Dubler-redirect 66  
2 Aronowitz-direct  
2 BY MR. SPEISER:

3 Q Mr. Dubler, when you testified, you testified  
4 you left the New York City area and went to Miami. Did you  
5 at that time contact Mr. Eisenberg and tell him that you  
6 were leaving New York?

7 A No.

8 Q When you came back from Miami to New York,  
9 as you testified, did you contact Mr. Eisenberg and tell  
10 him you were back from New York?

11 A No.

12 Q When ~~you~~ returned to New York from Miami, did you  
13 contact Bernie and tell him you were back?

14 A No.

15 MR. SPEISER: I have no questions.

16 THE COURT: All right. You may step down.

17 (Witness excused.)

18 THE COURT: Next witness.

19 MR. SPEISER: The government will call Robert  
20 Aronowitz as its next witness.

21  
22 ROBERT ARONOWITZ, called as a witness,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. SPEISER:

1 dhh

Aronowitz-direct

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2 Q Mr. Aronowitz, I am going to ask you to speak  
3 loud and slowly so that the members of the jury can hear  
4 what you have to say.

5 Mr. Aronowitz, how are you employed?

6 A Self.

7 Q Mr. Aronowitz, do you know an individual by  
8 the name of Benjamin Eisenberg?

9 A Yes, sir.

10 Q Do you see Benjamin Eisenberg here today?

11 A Yes, sir.

12 Q Would you please point him out?

13 A Right over there.

14 Q Mr. Aronowitz, have you ever had the occasion  
15 to meet with the defendant Benjamin Eisenberg?

16 A Yes, sir.

17 Q Do you recall when that meeting first took place?

18 A About eight years ago.

19 Q Mr. Aronowitz, have you ever been convicted  
20 of a crime before?

21 A Yes.

22 Q Do you recall what crime that was?

23 A Bribery.

24 Q When did that conviction take place?

25 A April of '73.

2 Q Did you plead guilty?

3 A Yes.

4 Q Is that when you pled guilty?

5 A Yes.

6 Q Did you receive a sentence when you were sentenced?

7 A Yes.

8 Q What was that sentence?

9 A 18 months suspended sentence.

10 Q Were you placed on probation?

11 A Yes, sir, for 18 months.

12 Q Mr. Aronowitz, were you ever told that in  
13 connection with that crime for which you were indicted--

14 MR. WASHOR: Objection.

15 THE COURT: You have jumped the gun. Wait a  
16 minute. Go ahead.

17 Q Mr. Aronowitz, were you ever told, in connection  
18 with that crime for which you were indicted, that if you  
19 cooperated with the government your cooperation would be  
20 made known to the court?

21 THE COURT: Is this in connection with the bribery  
22 case?

23 MR. SPEISER: Yes, your Honor.

24 MR. WASHOR: I withdraw the objection.

25 \*Q Would you answer that question, please.

2 A Yes.

3 Q Did you in fact cooperate with the government?

4 A Yes.

5 Q Mr. Aronowitz, did you ever receive any money  
6 from the government?

7 A Yes.

8 Q How much money did you receive?

9 A \$400.

10 Q From whom did you receive that money?

11 A From the FBI.

12 Q Do you recall when you received that money?

13 A I believe it was in March of '73.

14 Q What was that information paid to you for?

15 MR. WASHOR: Objection.

16 MR. SPEISER: Excuse me. I apologize.

17 THE COURT: What was the money paid for?

18 Q What was the money paid for?

19 A For traveling and for food.

20 Q Was that the only occasion that you ever received  
21 any money from the government?

22 A Yes, sir.

23 Q Mr. Aronowitz, how did you first meet the  
24 defendant Benjamin Eisenberg?

25 A I met him through a party, through some man.

1 dhh

Aronowitz-direct

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2 Q What was this man's name?

3 A Phil.

4 Q Did Phil personally introduce you to Mr. Eisenberg?

5 A No. Mr. Eisenberg called me on the telephone.

6 Q Where did Mr. Eisenberg call you on the telephone?

7 A At my place of business.

8 Q Where was your place of business located at that  
9 time?

10 A On West 38th Street in Manhattan.

11 Q What type of business were you engaged in  
12 at that time?

13 A Dress cutting, contracting.

14 Q Were you the owner of the business?

15 A Yes, sir.

16 Q Did Mr. Eisenberg tell you how he got your phone  
17 number?

18 A Well, I presumed he got it from --

19 MR. WASHOR: Objection.

20 THE COURT: Don't presume. Did he tell you  
21 how he got your number?

22 THE WITNESS: He got it from this fellow that--

23 MR. WASHOR: Objection.

24 THE COURT: The question is, did he tell you how  
25 he got it.

2 THE WITNESS: Yes, through that party.

3 THE COURT: Is this what he said?

4 THE WITNESS: Yes.

5 THE COURT: All right. Go ahead. The party being  
6 Phil.

7 THE WITNESS: That's right.

8 Q When Mr. Eisenberg contacted you, on the  
9 telephone, did you have a conversation with him at that  
10 time?

11 A Well, I told him -- I asked him, I needed some  
12 money and he didn't want to talk on the telephone, and  
13 he said he'd get back to me.

14 Q Was that all that was said in that conversation  
15 between you and Mr. Eisenberg?

16 A Yes.

17 Q Did Mr. Eisenberg in fact subsequently get back  
18 in touch with you?

19 A Yes, he did.

20 Q How soon afterwards?

21 A A few days later.

22 Q How did he get in touch with you?

23 A Well, he called me and I gave him my address  
24 and he came up to my place.

25 Q Did he come up to your place the same day he

2 called you?

3 A I believe it was a day later.

4 Q Did he come up to your place alone?

5 A Yes.

6 Q You stated your place was located on West 38th  
7 Street?

8 A Yes, sir.

9 Q Is it on the street level?

10 A No, it was on the third floor.

11 Q Were you in when Mr. Eisenberg came up to your  
12 place?

13 A Yes.

14 MR. WASHOR: Objection.

15 THE COURT: Overruled.

16 MR. WASHOR: I apologize for not standing.

17 THE COURT: Go ahead. Next question.

18 Q Did you have a conversation with Mr. Eisenberg  
19 at your place of business at that time?

20 A Yes.

21 Q Do you recall at this time what was discussed  
22 between you and Mr. Eisenberg?23 A Well, it was a discussion about money. I needed  
24 some money.

25 Q Did you tell him what you needed that money for?

1 dhh

Aronowitz-direct

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2 A Yes.

3 Q What did you tell him?

4 A I needed the money for my business, for machinery  
5 and to fix up the place.

6 Q Did you tell him how much money you needed?

7 A Yes.

8 Q How much did you tell him you needed?

9 A \$30,000.

10 Q What, if anything, did Mr. Eisenberg say after  
11 you told him you needed \$30,000?12 A He said -- we talked about it, and he said  
13 what it would cost me and he would get back to me.

14 Q Did Mr. Eisenberg --

15 THE COURT: What did he say it would cost you?

16 THE WITNESS: \$600 a week.

17 THE COURT: For how many weeks?

18 THE WITNESS: It wasn't for weeks. Until I paid  
19 up the \$30,000 in one time.20 THE COURT: In other words, it was \$600 a week  
21 plus \$30,000?22 THE WITNESS: In other words, when I finished,  
23 if I gave him \$30,000 plus 600, that would be \$30,000  
24 and 600, and I'd be finished.

25 THE COURT: If you paid up in one week.

2 THE COURT: Yes. And if you took two weeks?

3 THE WITNESS: I'd be paying \$600 each week.

4 THE COURT: Then you had to pay the \$30,000 anyhow?

5 THE WITNESS: That's right.

6 Q So Mr. Eisenberg didn't tell you that there was  
7 any definite time limit for the loan?

8 A No.

9 Q Mr. Eisenberg didn't tell you that you had to  
10 repay the loan at a certain point in time?

11 A No.

12 Q Did Mr. Eisenberg tell you what this \$600 was  
13 to be treated as?

14 A Interest.

15 Q He did say it was to be treated as interest?

16 A Right.

17 Q Did Mr. Eisenberg give you the \$30,000 at that  
18 time?

19 A No, not at that time.

20 Q How long did that conversation take place?

21 A About 15, 20 minutes.

22 Q Did anyone else at your shop overhear that  
23 conversation?

24 A No.

25 Q Did Mr. Eisenberg subsequent to that meeting at

2 your shop ever get back to you again?

3 A Yes. A few days ' er.

4 Q Did he telephone you or come to your place again?

5 A No, he called me up and told me to meet him.

6 Q Where did he tell you to meet him?

7 A I met him on 37th Street and near Seventh Avenue,  
8 on Seventh Avenue. 38th Street and Seventh Avenue, I  
9 believe it was.

10 Q Did Mr. Eisenberg state to you that there would  
11 be somebody with him?

12 A No, he was alone.

13 Q Did he state that he was going to be with somebody?

14 A No.

15 Q Did you in fact go to this address and meet Mr.  
16 Eisenberg?

17 A I did.

18 Q Did you go there alone?

19 A Yes, sir.

20 Q Was Mr. Eisenberg there when you arrived?

21 A Yes, sir.

22 Q Did you have a conversation with Mr. Eisenberg  
23 at that time?

24 A No.

25 Q Prior to that, to your leaving to go to meet Mr.

2 Eisenberg at that address, during that telephone conversation  
3 that you had with Mr. Eisenberg, did he tell you why he  
4 wanted to meet you?

5 A Yes, he had the money for me.

6 Q When you met Mr. Eisenberg at that address,  
7 did Mr. Eisenberg give you anything?

8 A Yes.

9 Q What did he give you?

10 A He gave me an envelope.

11 Q Did you have any conversation with Mr. Eisenberg  
12 at that time?

13 A No.

14 Q Were there people walking around at that time?

15 A Yes.

16 Q Did anybody else talk with you or Mr. Eisenberg  
17 at that time?

18 A No.

19 Q Did you open the envelope at that time?

20 A No.

21 Q Did you ever open up the envelope?

22 A When I got back to my place of business.

23 Q That same day?

24 A That's right.

25 Q What was inside the envelope when you opened it up?

1 dhh

Aronowitz-direct

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2 A \$30,000 in hundred dollar bills.

3 Q Did you count this money yourself?

4 A Yes.

5 Q What did you do with this money?

6 A I held it on my own personal self.

7 Q Did Mr. Eisenberg indicate to you --

8 MR. WASHOR: Objection.

9 MR. SPEISER: I will rephrase that question.

10 Q Subsequent to Mr. Eisenberg handing you this  
11 envelope, did you ever have another conversation with  
12 Benjamin Eisenberg?

13 A I didn't get that question.

14 THE COURT: He wants to know, after you got the  
15 money, did you talk to the man again?

16 A Oh, yes, yes. Yes, sure I did.

17 Q Do you recall if Mr. Eisenberg called you up  
18 shortly after he gave you that \$30,000?

19 A About a day later.

20 Q What did he say, if anything, to you in that  
21 conversation?

22 A Well, he'll be up to collect the money.

23 Q Did Mr. Eisenberg in fact come up to collect  
24 the money?

25 A Yes.

2 Q Did Mr. Eisenberg make you sign a note for this  
3 money?

4 A A few days later he called me up.

5 Q A few days after when?

6 A After I received the money.

7 Q Go ahead.

8 A And he called me, he called me up and he says  
9 he wanted me to sign a note for it.

10 Q Did he indicate to you what was going to be  
11 contained on that note?

12 A No.

13 Q Did he tell you where you were to meet him to  
14 sign that note?

15 A I met him in the same place.

16 Q Being where?

17 A On Seventh Avenue and 38th Street.

18 Q Was there anyone else present at that time?

19 A No.

20 Q What, if anything, did you do when you met Mr.  
21 Eisenberg at that place?

22 A Well, I signed the note.

23 Q Was this on the street or in a car?

24 A I believe there was a bank right near there,  
25 and I went into the bank to sign it.

2 Q Did Mr. Eisenberg sign the note with you?

3 A No. I just put my signature on. It was a regular  
4 standard form, you know, like a promissory note.

5 Q Did you read it over?

6 A No, because it was just \$30,000 on there and I  
7 signed my name to it.

8 Q Did Mr. Eisenberg sign that?

9 A Not that I know of.

10 Q Did you take the note?

11 A No.

12 Q Did Mr. Eisenberg take the note?

13 A Yes.

14 Q Did you ever receive a copy of that note on which  
15 you signed your signature indicating you were to pay Mr.  
16 Eisenberg \$30,000?

17 A No.

18 Q Let me ask you, Mr. Aronowitz, did you sign this  
19 note prior to making your first payment of \$600 to Mr.  
20 Eisenberg?

21 A I think it was after the first payment.

22 Q Did Mr. Eisenberg, the defendant, Benjamin Eisenberg,  
23 himself come and collect the \$600 from you that first payment?

24 A Yes.

25 Q Subsequent to that first collection of \$600, did

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2 Mr. Eisenberg, the defendant, Benjamin Eisenberg, ever  
3 again come to your place of business at West 38th Street  
4 to collect that money?

5 A I think one more time he came.

6 Q How long after you incurred that loan from  
7 Mr. Eisenberg of \$30,000 did you remain at that address  
8 at West 38th Street?

9 A Well, I was there about four years, about four  
10 years.

11 Q And did anybody else come to collect the \$600  
12 from you other than the defendant Benjamin Eisenberg?

13 A Yes, his brother.

14 Q How did you know it was his brother?

15 A He called and he told me his brother would come up.

16 Q How often did his brother come up?

17 A Every week.

18 Q Did he come on a particular day?

19 A Usually on a Friday.

20 Q Do you recall what his brother's name was?

21 A Phil.

22 Q Did he tell you his name was Phil?

23 A Yes.

24 Q What would you do every week when the defendant  
25 Benjamin Eisenberg's brother Phil came up to see you?

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2 A I would give him the money.

3 Q Would you give it to him in cash?

4 A Cash.

5 THE COURT: What money?

6 THE WITNESS: \$600.

7 Q Except for the times that you have indicated  
8 the defendant Benjamin Eisenberg came and collected the  
9 money from you, was the only person that ever came  
10 to collect the \$600 from you the defendant Benjamin  
11 Eisenberg, Phil Eisenberg?

12 A That's right.

13 Q And this happened every week?

14 A Right.

15 Q Over a four-year period?

16 A Right.

17 Q So how much did you pay Mr. Eisenberg came on  
18 this \$30,000 loan over this four-year period?

19 A Over \$125,000.

20 Q Now, Mr. Aronwotiz, how come after you paid him,  
21 paid Mr. Eisenberg or his brother, enough \$600 payments you --  
22 that would have --

23 MR. WASHOR: Objection.

24 THE COURT: You better rephrase the questi' n.

25 Q Mr. Aronowitz, did there come a time when in your

2 mind you knew that you had paid Mr. Eisenberg enough \$600  
3 payments that equalled \$30,000?

4 A Yes.

5 MR. WASHOR: Objection.

6 THE COURT: The form of the question is bad.

7 Did the total of the \$600 that you paid come to  
8 \$30,000 at some time?

9 THE WITNESS: Yes.

10 THE COURT: So that means that you paid him 50  
11 times?

12 THE WITNESS: Yes.

13 THE COURT: And that was all in one year?

14 THE WITNESS: No, in the period of four years.

15 THE COURT: In four years?

16 THE WITNESS: Yes.

17 THE COURT: Did it exceed the \$30,000 or was it  
18 just 30,000 on the nose?

19 THE WITNESS: I don't understand.

20 THE COURT: Did you give him 50 payments or more  
21 or less?

22 THE WITNESS: I paid him for four years, every  
23 Friday.

24 THE COURT: Yes? And every Friday every year?

25 THE WITNESS: Yes.

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2 THE COURT: Well, there are 52 weeks in a  
3 year; is that right?

4 THE WITNESS: Yes.

5 THE COURT: And 52 times \$600 would be \$31,200 in  
6 one year.

7 THE WITNESS: Yes.

8 THE COURT: And did you do that for four years  
9 straight?

10 THE WITNESS: Yes.

11 THE COURT: In other words, you paid him four  
12 times \$31,200?

13 THE WITNESS: Right.

14 THE COURT: For this \$30,000 loan?

15 THE WITNESS: Right.

16 THE COURT: And at the end of it you owed him  
17 \$30,000?

18 THE WITNESS: That's right.

19 THE COURT: We will take a short recess.

20 (Recess)

21 (Jury present.)

22 BY MR. SPEISER:

23 Q Mr. Aronowitz, during this four-year period did  
24 you ever not pay Mr. Eisenberg \$600?

25 A A few times.

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2 Q During that week, Mr. Eisenberg or his brother  
3 Phil?

4 A Yes.

5 Q Did Mr. Eisenberg ever say anything to you during  
6 that four-year period when you didn't pay him that \$600  
7 for a week?

8 A Well, he wanted to know why, and I told him  
9 there was no business, it was slow.

10 Q Do you recall the tone of that conversation?

11 MR. WASHOR: Objection.

12 THE COURT: Do you recall the conversation  
13 and the manner in which it was conducted?

14 A Well, he didn't like the idea, but --

15 MR. WASHOR: Objection.

16 THE COURT: What did he say? You have to try  
17 to put us into the picture so we understand what was going  
18 on and we will draw the idea whether he liked it or didn't  
19 like it. What did he say or what did he do?

20 A He wanted to know why and I told him there  
21 was no business and that was it. I didn't have no business  
22 for the week.

23 Q Is that the only question or statement that  
24 Mr. Eisenberg made to you during that period?

25 A At that time, yes.

2 Q Mr. Aronowitz, after one year had passed and  
3 you had paid \$600 every week say for those weeks that  
4 you have testified you didn't pay him, did you know  
5 in your own mind that you had paid him in excess of \$30,000?

6 A Yes.

7 Q Why did you continue to pay him \$600 a week in  
8 excess of that \$30,000?

9 MR. WASHOR: Objection.

10 MR. SPEISER: Should I rephrase that?

11 THE COURT: No, we will leave that for cross-  
12 examination. You may ask it in that form.

13 Q Mr. Aronowitz, what happened after this four-  
14 year period, did you --

15 THE COURT: Stop there. What happened after the  
16 four-year period.

17 A Well, business went bad and I moved out of that  
18 building and I couldn't afford to pay any more.

19 Q Where did you move to, Mr. Aronowitz?

20 A West 37th Street.

21 Q What did you do at West 37th Street?

22 A Well, I had a much smaller operation.

23 Q Were you still in the same business?

24 A The same business, yes.

25 Q And that business was what?

2 A Contract and cutting dresses.

3 Q When you moved to West 37th Street, did you ever  
4 have the occasion to meet with Mr. Eisenberg again?

5 A Yes.

6 Q The defendant Benjamin Eisenberg?

7 A Right.

8 Q Where did you meet with the defendant Benjamin  
9 Eisenberg?

10 A At my place of business.

11 Q What did Mr. Eisenberg say to you, if anything,  
12 when he came to your place of business?

13 A Well, he was yelling, a very foul mouth and he  
14 yelled he want ed his fucken money and I says "I can't  
15 make those payments any more."

16 Q Did he say that more than once?

17 A A couple of times.

18 Q During that same conversation?

19 A That's right.

20 Q Did you tell Mr. Eisenberg that you had  
21 moved from West 38th Street?

22 A When he found out --

23 MR. WASHOR: Objection.

24 THE COURT: He just wants to know were you the one  
25 who told him that you moved.

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2 THE WITNESS: No.

3 Q Did Mr. Eisenberg, the defendant Benjamin  
4 Eisenberg, tell you how he found out you moved to West  
5 37th Street?

6 A No.

7 Q What, if anything, did Mr. Eisenberg say to you  
8 when you told him you couldn't continue paying the \$600  
9 weekly payments?

10 A Well, I made a deal with him, I would try and give  
11 him 50 to \$75 a week.

12 Q What did Mr. Eisenberg say when you told him that?

13 A He didn't like the idea, but that's all I was  
14 able to pay.

15 Q But did he say anything when you told him  
16 that was all you were able to pay?

17 A He was yelling and screaming and I said that's  
18 all I could pay.

19 Q Did Mr. Eisenberg indicate to you that he would  
20 accept 50 to \$75 a week?

21 A Yes.

22 Q Did you in fact ever pay the defendant Benjamin  
23 Eisenberg while you were at West 37th Street amounts between  
24 50 and \$75?

25 A I did.

2 Q Do you recall on how many occasions?

3 A For a few months.

4 Q Was this a weekly payment?

5 A Yes.

6 Q Did you always make that payment to the defendant  
7 Benjamin Eisenberg?

8 A No, to his brother.

9 Q On some occasions, then, you made it to the  
10 defendant Benjamin Eisenberg and on other occasions you  
11 made it to his brother Phil Eisenberg?

12 A Right.

13 Q Were were these payments made?

14 A At my place of business.

15 Q At west 37th Street?

16 A Yes, sir.

17 Q Were were all these \$600 payments made?

18 A In my place of business.

19 Q Did you ever contact Mr. Eisenberg and tell  
20 him that you would meet him to pay him at a bar?

21 A No.

22 Q Did you ever contact Mr. Eisenberg and tell him  
23 that you would meet him somewhere on a street and pay him  
24 \$600?

25 A No.

2 Q Did Mr. Eisenberg ever ask you, that is, the  
3 defendant Benjamin Eisenberg, did he ever ask you to meet  
4 him on a street or meet him on a street to pay him \$600?

5 A No, sir.

6 Q Did he ever ask you to meet him at a bar and pay  
7 him \$600?

8 A No, sir.

9 Q Did you ever during the period that you paid  
10 Mr. Eisenberg \$600 and the period that you paid him  
11 amounts varying between 50 and \$75 ever call the defendant  
12 Benjamin Eisenberg and tell him that you wanted to pay  
13 him money?

14 A No. Not to pay him money, no.

15 Q Did you ever have the defendant Benjamin  
16 Eisenberg's telephone number?

17 A I did.

18 Q Did the defendant Benjamin Eisenberg ever  
19 give you his telephone number?

20 A Yes.

21 Q And you called him on occasions at his--

22 A Yes.

23 MR. WASHOR: Objection.

24 THE COURT: Finish your question.

25 Q Do you recall how many occasions you called the

2 defendant Benjamin Eisenberg?

3 A A few times.

4 Q Was the phone number you had for Benjamin  
5 Eisenberg's home phone number?

6 A Yes.

7 Q Did you ever have any other phone number for  
8 the defendant Benjamin Eisenberg?

9 A No, sir.

10 Q You have testified that you paid the defendant  
11 Benjamin Eisenberg and his brother Phil Eisenberg amounts  
12 between 50 and \$75 for a few month period?

13 A Right.

14 Q How many months was that, do you recall?

15 A About three months.

16 Q What happened at that point, after you stopped  
17 paying him 50 to \$75?

18 A Well, I had to close down that place on 37th Street,  
19 and I moved to a much smaller place on 36th Street.

20 Q Did you tell Mr. Eisenberg, the defendant, Benjamin  
21 Eisenberg, that you were moving to West 36th Street?

22 A I don't remember.

23 Q Did the defendant Benjamin Eisenberg ever come  
24 to see you at West 36th Street?

25 A I don't think he came. I think his brother came.

2 Q Did you ever tell his brother that you had moved  
3 to West 36th Street?

4 A I don't remember.

5 Q Did you ever have a conversation with his  
6 brother when he came to West 36th Street?

7 A Yes.

8 Q Did you ever mention in that conversation  
9 with Mr. Eisenberg's brother payment of moneys?

10 A On 36th Street?

11 Q Yes.

12 A I said "All I could give you is \$25 a week."

13 Q Did you in fact ever give the defendant Benjamin  
14 Eisenberg's brother \$25 a week?

15 A Yes, for a few weeks.

16 Q How come you only paid him for a few weeks?

17 A Because I had to pay the place. The marshals  
18 closed the place down and I had to go out of business.

19 Q Did you tell the defendant Benjamin Eisenberg  
20 that you were going out of business?

21 A No.

22 Q Do you recall when you went out of business  
23 at West 36th Street?

24 A It is over -- about over a year and a half ago,  
25 it must be.

2 Q After you went out of business at West 36th Street,  
3 did you ever have any further contact with Phil Eisenberg?

4 A No.

5 Q Did you ever have any further contact with the  
6 defendant Benjamin Eisenberg?

7 A Yes.

8 Q Do you recall when that contact took place?

9 A I met him --

10 Q Do you recall when it took place?

11 A About a year ago.

12 Q Do you recall where it took place?

13 A I met him -- I bunked in o him on Seventh Avenue.

14 Q Was this a planned, scheduled meeting?

15 A No. I just bunked into him ir. the street.

16 Q Where was that again?

17 A On Seventh Avenue and 38th Street.

18 Q Did you have a conversation with Mr. Eisenberg  
19 at that time?

20 A Well, he wanted to know what I was doing and s  
21 said "I'm going to try and go back in business."

22 Q Did Mr. Eisenberg respond to that statement?

23 A No.

24 Q After you told Mr. Eisenberg that you were  
25 going back into business, you don't recall Mr. Eisenberg

2 ever saying anything to you after that?

3 A I said I'll be in touch with him.

4 Q He said that to you or you said that to him?

5 A I said it to him.

6 Q Did Mr. Eisenberg have your home phone number?

7 A No.

8 Q Did he ever call you at home?

9 A No.

10 Q Was your home telephone number at that time listed?

11 A No.

12 MR. WASHOR: Objection.

13 THE COURT: Overruled.

14 Q Mr. Aronowitz, in any conversations that you  
15 had with the defendant Benjamin Eisenberg, did you ever  
16 use the name Jack to identify yourself?

17 A No.

18 Q How did you identify yourself whenever you had  
19 conversations with Benjamin Eisenberg?

20 A Bob.

21 Q Did you ever tell Benjamin Eisenberg your last  
22 name?

23 A Yes.

24 Q When was t' it?

25 A When I met him and when I signed the note he saw

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2 my last name on it.

3 Q Mr. Aronowitz, did you ever borrow any other money  
4 other than this \$30,000 from the defendant Benjamin Eisenberg?

5 A Yes.

6 Q Do you recall when that loan occurred?

7 A Well, it was about a few years after I borrowed  
8 \$7,000.

9 Q Where did the discussions surrounding that  
10 borrowing of an additional \$7,000 take place?

11 A In my place of business.

12 Q Where were you located at that time?

13 A 38th Street.

14 Q Did you ask the defendant Benjamin Eisenberg  
15 for \$7,000?

16 A That's right.

17 Q What did he say?

18 A He gave it to me.

19 Q What did he say?

20 A Well, I told him I needed it for a business.

21 MR. WASHOR: Objection.

22 THE COURT: Overruled.

23 What did he say?

24 THE WITNESS: Can I talk, your Honor?

25 THE COURT: Yes.

2 THE WITNESS: I said I need it for a dress  
3 business up in Rockland County. And he gave me the money.

4 Q Was this a business that you owned?

5 A Well, I opened a dress shop up there.

6 Q Did you use this money for that business?

7 A That's right.

8 Q Did you ever repay the defendant Benjamin  
9 Eisenberg that \$7,000?

10 A No.

11 Q Why did you not ever repay him the \$7,000?

12 MR. WASHOR: Objection.

13 THE COURT: I don't think it is important  
14 why he didn't. The objection is sustained.

15 What were the terms of that loan?

16 THE WITNESS: There was no terms on it.

17 THE COURT: Did you sign a note?

18 THE WITNESS: No, sir.

19 THE COURT: How did you get the money?

20 THE WITNESS: He gave me the cash.

21 THE COURT: Where did you get the cash?

22 THE WITNESS: In my place of business.

23 THE COURT: In what denominations?

24 THE WITNESS: Hundred dollar bills.

25 Q Did you get this money the same day that you

2 asked him for the money?

3 A A few days after.

4 THE COURT: How many years had the first loan been  
5 going by the time you got the \$7,000?

6 THE WITNESS: I believe about two years.

7 Q Mr. Aronowitz, when you told Mr. Eisenberg,  
8 when you were at West 36th Street, that you were unable  
9 to pay him \$25 any more, did Mr. Eisenberg say anything  
10 to you?

11 A I didn't tell it to Mr. Eisenberg because I  
12 didn't see Mr. Eisenberg, I saw his brother.

13 THE COURT: He wants to know what the brother said  
14 when you told him that.

15 THE WITNESS: He didn't say nothing, the brother.

16 MR. SPEISER: I have no further questions.

17 THE COURT: Cross-examine.

18 CROSS-EXAMINATION

19 BY MR. WASHOR:

20 Q November of 1973 you were indicted in this  
21 district for the crime of bribery, which you testified  
22 you pled guilty to; am I correct, sir?

23 A That's right.

24 MR. SPEISER: Your Honor, I object to that.

25 It wasn't November --

2 THE COURT: Please.

3 MR. SPEISER: I wanted to characterize the  
4 exact date.

5 THE COURT: The witness will take care of it.

6 And if he doesn't, you will do it on redirect examination.

7 Q November of 1971 is the time that you were  
8 indicted for the crime of bribery that you testified  
9 that you pled guilty to; am I correct, sir?

10 A Yes.

11 Q When did you borrow the \$30,000 from Mr. Eisenberg  
12 that you testified to?

13 A About eight years ago.

14 Q Eight years from today?

15 A Yes.

16 Q In 1964?

17 A Yes.

18 THE COURT: Eight years, is that 1964?

19 MR. WASHOR: I didn't mean '64, Judge. I'm sorry.

20 THE COURT: That's what you said.

21 Q 1967 or '68, am I correct, sir?

22 A Yes.

23 Q At the time that you were indicted for the  
24 crime of bribery that you pled guilty to, were you still  
25 paying Mr. Eisenberg 600 a week?

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2 A Yes, I was paying him that money, too. He didn't  
3 want to know from nothing, he wanted his money.

4 Q But you were paying him?

5 A My shop was still running.

6 Q Do you remember when you stopped paying 600 a  
7 week, the year?

8 A Not offhand.

9 Q Do you remember the year?

10 A I paid him for four years.

11 Q Until approximately 1972, would that be reasonable,  
12 approximate time?

13 A Right.

14 Q That you stopped paying him the 600 a week?

15 A Yes.

16 Q You pled guilty in April of 1973 to the crime  
17 of bribery that you testified to on direct examination;  
18 am I correct?

19 A Yes.

20 Q Isn't it a fact, sir, that you came forward  
21 and discussed with certain agents the fact that he loaned  
22 you money; am I correct, before you were sentenced in  
23 April of 1973?

24 A Not that I recall.

25 MR. SPEISER: If Mr. Washor can identify with whom

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2 he is supposed to have had these discussions.

3 THE COURT: Mr. Speiser, will you please wait  
4 your turn?

5 Q Sir, didn't you --

6 THE COURT: If you have a legal objection, make it.  
7 But when the lawyer makes a mistake, that is no cause for  
8 you to jump up.9 Q Sir, didn't you make a kind of a deal with the  
10 government or in relation to the bribery case?

11 A I made a deal? I didn't make any deal with them.

12 Q Didn't you sit with the U.S. Attorney, the  
13 lawyer, and work out a fact that if you cooperated your  
14 cooperation would be brought to the attention of the judge  
15 when you were sentenced?

16 A Yes, that -- they didn't guarantee me anything.

17 Q But they said they would bring all the cooperation  
18 to the judge's attention on the date of sentence?

19 A Right.

20 Q Correct? And you didn't go to jail, did you?

21 A No.

22 Q You got 18 months suspended sentence and  
23 probation, am I correct?

24 A That's right.

25 Q And you had cooperated up to that point; am I

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2 correct?

3 A That's right.

4 Q By the way, this bribery, how much money did the  
5 bribery involve?

6 A \$1,500.

7 Q Was it given to a public official, sir?

8 A To the IRS.

9 Q And it had to do with income tax, am I correct?

10 A That's right.

11 Q An audit of yours, am I correct?

12 A That's right.

13 Q You borrowed this \$30,000 approximately in 1967,  
14 1968 --

15 THE COURT: Please don't backtrack, will you?

16 It is getting late in the afternoon. We don't have to hear  
17 the same date over and over and over again.

18 Q When you borrowed the \$30,000, as you have testified,  
19 you were in business, am I correct?

20 A I was in business.

21 Q What was the nature of your business?

22 A Dress cutting.

23 Q How many employees did you have?

24 A It varied. If it was busy, I had more employees.  
25 If it was slow, I had less employees.

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2 Q Did you file income tax for the year that you  
3 borrowed the \$30,000?

4 A I filed every year.

5 Q How much did you report the first year after  
6 you borrowed the \$30,000?

7 MR. SPEISER: Objection.

8 THE COURT: Sustained.

9 Q How much income from your business did you make,  
10 sir, the first year after you borrowed the \$30,000?

11 A I don't remember, my accountant took care of all  
12 of that.

13 Q You had an accountant; am I correct?

14 A That's right.

15 Q Did you also have an attorney?

16 A That's right.

17 Q Did you go with them when you signed a note for  
18 \$30,000?

19 A No.

20 Q Did you get a copy of the note?

21 A No.

22 Q At the time that Mr. Eisenberg allegedly  
23 gave you \$30,000, did you ask him for a copy of the note?

24 A No.

25 Q When he gave you the \$30,000, you had not known him

2 before that time, am I correct?

3 A No.

4 Q You had no dealings with him before that time,  
5 am I correct?

6 A I never met him before.

7 Q Did Mr. Eisenberg, when he gave you the \$30,000,  
8 ask you to take a life insurance policy out?

9 A No.

10 Q To protect the loan?

11 A No.

12 Q Did he ask for collateral, sir?

13 A No.

14 Q Did you tell him this was your business and  
15 you needed the money for the business?

16 A Yes.

17 Q Did you tell him that you were the sole owner  
18 of the business?

19 A That's right.

20 Q Did he ask for any shares of stock in the business?

21 A No.

22 Q Did Mr. Eisenberg try to do anything at the  
23 time he gave you the \$30,000 to protect that very \$30,000?

24 A Well, I asked him to try and get me some business,  
25 he never got it for me.

2 Q Now, sir, did Mr. Eisenberg ask you for  
3 any document that would protect him for the \$30,000  
4 that he gave you?

5 A No.

6 Q Do you remember what your payroll was the  
7 first year after you got the \$30,000?

8 A I don't remember.

9 Q Can you give me an approximation?

10 A I have no idea.

11 Q Where were you living at that time? I'm talking  
12 about within the year following the \$30,000. Where did  
13 you live?

14 A What year was that?

15 Q 1967 or '68.

16 A I lived in Brooklyn.

17 Q Did you have an automobile?

18 A Yes.

19 Q Do you remember--

20 A I had quite a bit -- bit of automobiles, I don't  
21 remember what type it was.

22 MR. SPEISER: Objection.

23 Q Didn't you have a Cadillac, sir?

24 A At one time.

25 Q In 1967-68, did you have a new car every two years?

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2 A Almost.

3 Q And it was the big cars, in the Cadillac price  
4 range?

5 A No.

6 MR. SPEISER: Objection, your Honor.

7 THE COURT: Overruled.

8 A No.

9 Q Did you ever have the small Chevy during that  
10 period of time?

11 A I had a Buick.

12 Q Are you married, sir?

13 A Yes.

14 Q Do you have children?

15 A Yes.

16 Q What was the approximate ages of your children  
17 at that four-year period of time without their names?

18 THE COURT: I don't think you need that. Go  
19 on to something else.

20 Q Did you send your children to camp?

21 THE COURT: I don't think we need that, either.

22 Q Sir, where did you get \$600 a week if your  
23 business was failing for the first year to pay in cash  
24 to Mr. Eisenberg or his brother?

25 A I got it from the business.

2 Q Weren't you gambling?

3 A I used to go to the trotters. I never bet  
4 with any bookmakers.

5 Q Weren't you introduced to Mr. Eisenberg through  
6 a bookmaker?

7 A That's right.

8 Q Where did you know the bookmaker from?

9 A From the garment trade.

10 Q You never bet with the bookmaker that introduced  
11 you?

12 A No.

13 Q Was the bookmaker present when he introduced  
14 you to Mr. Eisenberg?

15 A No, he wasn't present at that time.

16 Q During that four-year period of time that you  
17 paid him almost \$125,000, he didn't use any strom arm  
18 tactics, did he?

19 A Never.

20 Q Where did you pick up the 30,000?

21 A On Seventh Avenue and 38th Street.

22 Q No witnesses to that?

23 A No.

24 Q Nobody was there?

25 A There was people in the street.

1 dhh Aronowitz -cross 106

2 Q Let me finish, please, if I may.

3 Was anybody there with Mr. Eisenberg that could  
4 verify that he gave you \$30,000?

5 A No.

6 Q Over four years you paid Mr. Eisenberg directly  
7 approximately two payments, am I correct, two or three  
8 payments?

9 A Over four years?

10 Q Over the four years.

11 A What do you mean two payments?

12 Q Didn't you only see him a couple of times in  
13 person?

14 A In person, yes.

15 Q In person, I'm sorry. A couple of times, am I  
16 correct?

17 A More than a couple of times.

18 Q Three, four times, am I correct, most of the  
19 time it was his brother that came up to pick up \$600  
20 a week, am I correct?

21 A That's correct.

22 Q And during that entire period of four years,  
23 Mr. Aronowitz, you only missed a couple of payments;  
24 am I correct?

25 A That's right.

1 dhh

Aronowitz-cross

107

2 Q Two or three, am I correct?

3 A Maybe four.

4 Q Four. I don't mean to be exact. A handful in  
5 comparison to 200 some-odd payments; am I correct? You  
6 have to answer. Am I correct, sir?

7 A Do you want to phrase that question again?

8 Q You only missed a handful of payments in  
9 a total of about 200 some-odd payments that you made?

10 A Yes.

11 Q Was anybody ever present when you gave him \$600  
12 on the few occasions?

13 A No.

14 Q Anybody ever present when you gave the 600  
15 to his brother Phil on occasions?16 A People working in the shop. I mean, there  
17 was people working in the shop.

18 Q Did anybody see you give him the money?

19 A No.

20 Q After the first year, you knew you paid him  
21 \$30,000 plus back already, am I correct?

22 A That's right.

23 Q Did you ask the man for the note for \$30,000  
24 that you signed?

25 A No.

2 Q Did you ever ask him to get the note back  
3 after you paid \$125,000?

4 A No.

5 Q Other than being indicted and charged with  
6 a crime of bribery, did you ever come forward to tell  
7 any member of law enforcement that Mr. Eisenberg was  
8 a shylock?

9 THE COURT: Just ask a proper question. That's  
10 excluded.

11 Q Other than after--

12 THE COURT: Not other than after anything. Just  
13 ask a direct question.

14 Q Prior to being indicted for the crime of  
15 bribery, did you come forward to any law enforcement  
16 officer to tell them about the \$30,000 loan and the repayment  
17 of \$125,000?

18 A No.

19 Q After the first year you knew you had paid him  
20 \$30,000 plus, did you ask his brother Phil to get that  
21 \$30,000 note back?

22 A No.

23 Q Did you ever ask him, when you spoke to him  
24 on the phone afterwards, for the note?

25 A He would never talk on the phone much.

1 dhh Aronowitz-cross 109

2 Q Did you see him in person?

3 A When he came up to the place.

4 Q When he came up to the place, did you say, come  
5 on, I paid you \$32,000, give me the note back?

6 A He wanted his full money.

7 Q Did you ask him for the note back? Forget  
8 what he wanted.

9 A No, no.

10 Q During that four-year period of time did  
11 you tell your accountant about the repayment of \$125,000?

12 A My accountant didn't know about it.

13 Q Did you tell your lawyer?

14 A No.

15 MR. WASHOR: Would the court bear with counsel  
16 for one moment, please?

17 Q By the way, you told Mr. Eisenberg you needed  
18 the \$30,000 for your business, am I correct?

19 A That's right.

20 Q What did you do with it?

21 A I bought machinery.

22 Q With the 30,000?

23 A Some machinery, and I moved from one floor  
24 to another floor in the building.

25 Q Sir, was your business doing good at that time,

2 when you borrowed the 30,000?

3 A Yes.

4 Q And did you owe any money anywhere else?

5 A I owed some personal debts, yes.

6 Q Not too much, though, am I correct?

7 A I don't remember offhand.

8 Q Anything close to 30,000?

9 A I don't remember offhand.

10 Q How long had you been in business at that point?

11 A I'd been in business for many years.

12 Q Did you go into the bank and ask them to borrow  
13 \$30,000 at a legitimate rate for a legitimate period of time?

14 A No.

15 MR. SPEISER: Objection to the characterization  
16 of that question.

17 THE COURT: I don't see why you object. Overruled.

18 A I didn't go into the bank.

19 Q When he gave you the \$30,000, did he discuss  
20 how long a period of time he was giving you the money for?

21 A I didn't hear you, you walked away.

22 Q When he gave you the \$30,000, wasn't there a  
23 discussion as to how long a period of time he was giving  
you the money?

25 A Yes, the discussion was when I paid him the

2 30,000 back in full, I'd be finished with him, in one shot.

3 Q So it was understood that--

4 A I'd be paying interest the whole time.

5 Q Ten years or twenty years, however long it would  
6 take; am I correct?

7 A That's right.

8 Q Sir, you say Mr. Eisenberg had a note that  
9 was prepared that you signed?

10 A That's right.

11 Q All right. You signed an obligation for \$30,000  
12 where?

13 A I believe it was on 38th Street there's a bank  
14 over there. I think we went into the bank and I signed it.

15 Q You mean to use the inside of the bank?

16 A Yes.

17 Q All right. And you looked at the note?

18 A It just had my name on there and \$30,000,  
19 that's all.

20 Q And you signed it?

21 A That's right.

22 Q Did it have an amount of interest on there?

23 A No.

24 Q Did it have a date on there?

25 A No date, no nothing.

2 Q Did it have what they call a maturity date?

3 A No. It was a regular form note that you buy in  
4 the store.

5 Q By the way, you never gave him a check, did you?

6 A Not that I recall.

7 Q Did you ever discuss putting him on the books  
8 of your corporation as a method of repayment back for this  
9 money?

10 A No.

11 Q You testified he gave you the \$30,000 in an  
12 envelope on a street corner?

13 A That's right.

14 Q Did he just turn the envelope over to you?

15 A That's right.

16 Q And you didn't open it?

17 A Would you open an envelope with \$30,000 in the  
18 street in Manhattan?

19 Q I wouldn't take an envelope with \$30,000  
20 in the street.

21 MR. SPEISER: Objection, your Honor.

22 THE COURT: That's interesting but uninformative.

23 Go to the next question.

24 Q Did you open the envelope?

25 A When I got back to my place of business.

1 dhh Aronowitz- cross 113

2 Q Did he have the note there when he gave you the  
3 \$30,000?

4 A No.

5 Q That was a day or two later; am I correct?

6 A That's right.

7 Q And you put the envelope quickly in your pocket;  
8 am I correct, and went to your place of business?

9 A That's right.

10 Q By the way, sir, did he ever tell you that  
11 you don't owe him any money any more?

12 A No.

13 Q Did you ever send money to his brother Phil  
14 that you don't have to pay any more?

15 A No.

16 Q Did anybody come to say forget about it, you're  
17 off the hook, you paid enough money?

18 A No, as of now I still owe him the money.

19 Q You paid over \$125,000, you said?

20 A That's right.

21 Q You mean according to your agreement, you owe  
22 him \$30,000?

23 A That's right.

24 Q While you were paying \$600 a week, you say that  
25 you came to him because you were short again, business was

1 dhh Aronowitz-cross 114

2 bad, am I right?

3 A I come to him that I wanted to open up a dress

4 store.

5 Q You mean expand your business?

6 A That's right. Not expand it, a store.

7 Q A store. A side business to the cutting

8 business you owned?

9 A That's right.

10 Q And you needed \$7,000; am I correct?

11 A That's right.

12 Q And I gave it to you, am I right?

13 A That's right, in fact he was up to Rockland

14 County.

15 Q He came to see you?

16 A That's right, with his dog in the car.

17 Q And he gave you the money?

18 A That's right.

19 Q And you signed a note?

20 A I didn't sign no note for it.

21 Q He asked you to sign a note?

22 A No.

23 MR. SPEISER: Objection, your Honor, he said

24 he didn't sign a note.

25 THE COURT: Would you just wait your turn.

2 Overruled.

3 Q Did he ask you to sign the note?

4 A Not for this \$7,000.

5 Q Did he ask you for any security for the \$7,000?

6 A No. No.

7 Q Did you say to him "Hey"--

8 A I said to him that--

9 Q May I finish?

10 A Go ahead.

11 Q Did you say to him, I already paid you more  
12 than \$60,000?

13 A I told him that a hundred times.

14 Q And continued to pay?

15 A That's right.

16 Q And what were the arrangements to pay the \$7,000  
17 back?

18 A I told him if we -- if I do good in the dress  
19 store, I'd be able to do something with him.

20 Q When he gave you the \$7,000, didn't he make  
21 arrangements for X amount of dollars a week to be paid back?

22 A No.

23 Q Did he tell you how long he's giving you  
24 the 7,000 for?

25 A No.

2 Q Did he say it was a gift?

3 A He didn't say it was a gift. He came up to  
4 Rockland County himself to look at the place and he had  
5 his dog with him because his doing bit my coat apart.

6 Q Did he ask for a piece of the action in  
7 Rockland County?

8 A Yes, I said if we do good, I'll give you a  
9 piece of the action.

10 Q You promised him that; is that correct?

11 A That's right.

12 Q Did you sign any papers?

13 A No.

14 Q Did he ask you to sign any papers?

15 A No.

16 Q Did he ask to have something in writing, a  
17 document, to prove that he has a financial interest  
18 in the place in Rockland County?

19 A No.

20 Q Did you pay him the \$7,000 back?

21 A No, sir.

22 Q So you owe him now according to you \$37,000?

23 A 37, that's right.

24 MR. WASHOR: I ask for the Court's indulgence  
25 for just one moment, please.

2 Q Did he ever try to settle this whole thing  
3 with you?

4 A No.

5 Q The amount of money that you owed him?

6 A No.

7 Q Did you ever try to discuss it, discuss settlement?

8 A No.

9 Q Do you recall on March 15, 1973, approximately  
10 a month before you were sentenced to probation in the  
11 bribery case, having an interview with some members  
12 of the FBI?

13 A Yes.

14 Q Do you remember the nature of the discussion  
15 of that interview? Can you answer just yes or no?

16 A I don't remember.

17 MR. WASHOR: With the Court's permission, may  
18 I approach the witness box to give a piece of paper to  
19 the witness, please?

20 THE COURT: Go ahead.

21 Q Mr. Aronowitz, would you just look at that  
22 particular piece of paper and read it to yourself.

23 MR. SPEISER: Can Mr. Washor indicate what  
24 piece of paper he is giving to the witness?

25 MR. SPEISER: I think it is 3500 -- excuse me,

2 sir --3510, your Honor.

3 Q Have you read it, sir?

4 A Yes.

5 Q Does it refresh your recollection as to the  
6 substance of the conversation that you had on March 15,  
7 1973, with FBI agents?

8 A No, that isn't accurate.

9 Q I didn't ask whether it is accurate. I just  
10 asked whether or not the reading of that report refreshes  
11 your recollection as to some of the matter that you  
12 discussed with the FBI on March 15, 1973?

13 A Yes.

14 Q Is it not a fact, sir, that you told the FBI  
15 agents that Mr. Eisenberg wanted to settle the whole  
16 problem for \$15,000?

17 A I don't remember that.

18 Q Do you deny that that is what you said to the  
19 FBI agents?

20 A I don't deny but I don't remember it.

21 Q Sir, is it not a fact that you told the FBI  
22 agents at that interview, March 15, 1973, that you owed  
23 Mr. Eisenberg \$8,000?

24 A I told them I owed him \$7,000 for the store money.

25 Q Did you tell the FBI agents that you had borrowed

2 about \$40,000 from Mr. Eisenberg and that's how much you  
3 owed him?

4 A No, I don't recollect that.

5 Q Do you deny that you made those statements in  
6 sum and substance?

7 A I don't deny it, I don't remember it.

8 Q Do you recall a conference on January 2, 1973,  
9 with Agent Wenig, U.S. Attorney Joel Friedman?

10 A Yes.

11 Q Do you remember the substance of that confrontation?

12 A Well, it was about --

13 Q Can you just answer yes or no? Do you remember  
14 in substance?

15 A I don't remember it, no, I don't.

16 MR. WASHOR: May I approach the witness box?

17 THE COURT: Yes.

18 Q I am asking you to look at--

19 THE COURT: What's the exhibit number?

20 Q -- 3508, and read that statement to yourself,  
21 please.

22 A I remember part of it.

23 Q Just read it to yourself, please.

24 A I read it.

25 Q Are you complete? Does it refresh your recollection,

1 dhh Aronowitz-cross 120  
2 redirect  
3 sir, as to the substance of the conversations between  
4 yourself, FBI Agent Wenig, and Special Attorney Friedman?

5 A Yes, but--

6 Q Excuse me. Does it refresh your recollection?

7 A Yes.

8 Q Is it not a fact, sir, that at that meeting  
9 on January 2, 1973, you said that Eisenberg was pressuring  
10 you for \$8,000 that you owed him?

11 A No. The figures aren't right, and he wasn't  
12 pressuring me in that kind of a way.

13 MR. WASHOR: I have no further cross-examination.

14 THE COURT: Any redirect?

15 MR. SPEISER: Just a few questions, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SPEISER:

18 Q Mr. Aronowitz, you testified that you had  
19 cooperated with the government authorities after you  
20 had been indicted; is that correct?

21 A Right.

22 Q Mr. Aronowitz, did you provide the government  
23 with certain information?

24 A Yes.

25 Q Did you answer all the questions that were  
26 addressed to you by these government agents?

2 A Yes.

3 Q And you were told that by answering all these  
4 questions that your cooperation would be made known to  
5 the court?

6 A Right.

7 Q When either the defendant Benjamin Eisenberg  
8 or his brother Philip Eisenberg came to your place to  
9 collect the money from you, whether it be \$600 or  
10 between 50 and \$75 or \$25, do you recall whether they  
11 attempted to engage you in conversations or collect this  
12 money from you in front of other persons?

13 MR. WASHOR: Objection.

14 THE COURT: Was there any such occasion as  
15 described in that question?

16 THE WITNESS: You mean was there people around?

17 THE COURT: Yes.

18 THE WITNESS: No, usually there was-- I mean,  
19 my workers were around but I was off on the side.

20 THE COURT: This is redirect. You know, you  
21 have covered all of this on your direct examination.

22 MR. SPEISER: I apologize.

23 Q I just want to ask you one last question,  
24 Mr. Aronowitz, and that is, you have testified that you  
25 owed, according to your statements, you owed Mr. Eisenberg

2 \$30,000 on one loan and \$7,000 on another loan,  
3 and that totals \$37,000?

4 A Right.

5 MR. SPEISER: I have no further questions.

6 THE COURT: All right. Step down.

7 (Witness excused)

8 THE COURT: Next witness.

9 MR. SPEISER: The government rests its case.

10 THE WITNESS: Am I excused?

11 THE COURT: Yes.

12 THE WITNESS: Can I go home?

13 THE COURT: Yes.

14 Ladies and gentlemen, I will give you a five-  
15 minute recess while I talk to the lawyers about some  
16 legal matters.

17 (Jury excused)

18 THE COURT: All right, Mr. Washor.

19 MR. WASHOR: I most respectfully move this  
20 court, at the end of the government's case, to dismiss  
21 each and every count of the indictment predicated upon  
22 the grounds the government has failed to establish a prime  
23 facie case.

24 THE COURT: On the basis of the documentary  
25 evidence and the proof adduced here, the jury could beyond a

2 reasonable doubt find that the government's case has  
3 been sustained and the motion is denied.

4 MR. WASHOR: I respectfully except, your Honor.

5 THE COURT: Are you ready to go forward?

6 MR. SPEISER: Your Honor, I am not. It is now  
7 20 after 5.

8 THE COURT: Well, it is half a day. Why aren't  
9 you ready?

10 MR. WASHOR: Because I reasonably anticipated  
11 the day would end at about 5 o'clock and, to be very  
12 frank with the court, I had hoped--

13 THE COURT: Look, we started late to accommodate  
14 you.

15 MR. WASHOR: I understand that.

16 THE COURT: And you want to quit early for  
17 accommodation, too. Do you have any witnesses you propose?

18 MR. WASHOR: Judge, the only decision that  
19 has to be made, I will be very frank with the court, is  
20 whether or not I am going to proffer a defense by way  
21 of Mr. Eisenberg.

22 THE COURT: Suppose you take ten minutes to  
23 discuss that again with your client and come to a decision.

24 MR. WASHOR: I can come to a decision if you give  
25 me the ten minutes. I will not ask for any delay beyond that.

2 THE COURT: Very good.

3 (Recess)

4 (Jury absent.)

5 MR. WASHOR: Your Honor, I neglected, in my  
6 motions, to reiterate all of the motions made relative  
7 to the legal sufficiency of the indictment as prepared  
8 through my moving papers and memorandum submitted to the  
9 court as if reiterated in its entirety at this point.

10 THE COURT: They will be deemed to have been made  
11 and denied.

12 MR. WASHOR: Exception. I don't think I  
13 have to except. I didn't mean to be disrespectful.

14 The defense will rest, your Honor.

15 THE COURT: Bring in the jury and sum up.

16 MR. WASHOR: Your Honor, may I make an application  
17 to the court?

18 THE COURT: Yes.

19 MR. WASHOR: Can I make the application in  
20 the absence of the jury, your Honor?

21 THE COURT: Yes.

22 MR. WASHOR: I would respectfully request  
23 this court to permit counsel to have the evening to prepare  
24 the summation and final argument.

25 THE COURT: I don't think that is necessary. This

2 case has been pending for a considerable period of time,  
3 Mr. Washor. You have requested the accommodations  
4 that you have received. You were able to weave in your  
5 trial problems before Judge Cannella, to get an adjournment,  
6 a long adjournment, of this case to a date that you thought  
7 you could be reached.

8 We suspended for nearly an hour and a half  
9 this morning to let you go on with some phase of that  
10 case before Judge Cannella became it became timely  
11 for you to do that.

12 We have reached the point now in the case  
13 of reasonable simplicity where I think it would be  
14 appropriate, and particularly in terms of the inclement  
15 weather here to have the summations tonight and charge  
16 the first thing in the morning.

17 MR. WASHOR: May I just suggest to the court  
18 and I do this most respectfully, your Honor, that while  
19 I have made every endeavor to be prepared to go to  
20 trial today, I have completed all of the aspects of  
21 a criminal trial without an unreasonable imposition upon  
22 the court. My actual engagement before another judge in  
23 a trial of that tremendous length was one that could not  
24 be avoided.

25 I suggest to your Honor that short of the

2 preparation, the final argument, every matter has been  
3 completed, the requests to charge were submitted, all  
4 motions were timely made, sir.

5 Further, there's been no delay vis-a-vis the  
6 cross-examination because the court has given me the period  
7 of approximately a half hour to read 3500 material that  
8 was given to me for the first time this morning. The  
9 severity of the charge is not diminished by the simplicity  
10 of the trial.

11 THE COURT: Please don't dramatize.

12 MR. WASHOR: I am not, I am being most sincere,  
13 Judge Pollack.

14 THE COURT: I am telling you that I think the  
15 day is still young and it is appropriate now to hear  
16 the summations of both sides.

17 In accordance with the rule, the government  
18 will sum up first, you will sum up second, the government  
19 will have a brief period.

20 Bring in the jury.

21 MR. WASHOR: Would your Honor give me 10 or  
22 15 minutes to coordinate thoughts?

23 THE COURT: I thought that's what you were  
24 doing.

25 MR. WASHOR: On the contrary.

2 THE COURT: I will certainly give you ten minutes  
3 to coordinate your thoughts and we will have the  
4 summation thereaft.

5 MR. WASHOR: Most respectfully.

6 THE COURT: Please, don't keep this going  
7 because you are using up your ten minutes.

8 MR. WASHOR: I just want the record to reflect  
9 in spite of the fact I requested ten minutes to formulate  
10 my thoughts I object to the court putting us in a position  
11 to make final argument at this particular juncture of  
12 the trial.

13 THE COURT: You have made your point on the  
14 record. It is without any substance or without any reason  
15 in the exercise of my discretion.

16 (Recess)

17 (Jury present)

18 THE COURT: State your decision on the record.

19 MR. WASHOR: Mr. Eisenberg, the defendant rests.

20 THE COURT: Ladies and gentlemen, that concludes  
21 the taking of evidence and we will now hear the arguments  
22 of counsel on what each side believes was established  
23 and tomorrow morning I will give my charge and instructions  
24 on the law.

25 All right, Mr. Speiser.

\* \* \* \* \*

Eisenberg  
charge  
Pollack 2  
850

dnjb 2

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CHARGE OF THE COURT

4 THE COURT: Ladies and gentlemen, we have reached  
5 the concluding phase of this trial, and the case will  
6 shortly be placed in your hands for a verdict.

7 I want to express to you the Court's apprecia-  
8 tion and thanks for your attentiveness and patience during  
9 this brief trial as befits the tryers of the facts in a  
10 case of importance, and this is a case of importance.

11 I shall now give you your final instructions,  
12 which will guide your deliberations.

13 First, let me read to you the indictment in  
14 this case, the charge that has been made.

15 "The Grand Jury charges:

25

1 dnjb 3

2                   "2. At said time and place, said Grand Jury  
3 was conducting an investigation into possible violations  
4 of United States statutes prohibiting extortion, loan-  
5 sharking and racketeering and other federal criminal  
6 statutes, with a purpose of determining whether any persons  
7 violated said statutes.

8                   "3. It was material to said inquiry to ascer-  
9 tain: (a) the knowledge and the extent of participation  
10 by the defendant Benjamin Eisenberg and others in situa-  
11 tions wherein usurious loans and extensions of credit  
12 had been made; (b) the knowledge and the extent of par-  
13 ticipation by the defendant Benjamin Eisenberg and others  
14 in transactions wherein extortionate means were used in  
15 the collection of extensions of credit; and (c) the iden-  
16 tifies of persons to whom the defendant Benjamin Eisenberg,  
17 and others associated with him, had lent sums of money at  
18 usurious rates of interest.

19                   "4. At said time and place Benjamin Eisenberg,  
20 the defendant, appearing as a witness under oath before  
21 said Grand Jury did testify falsely with respect to the  
22 aforesaid material matters and did make the following  
23 false material declarations:"

24                   (Continued on next page.)

25

1 dhjb 4

2 These are the declarations complained of in

3 Count 1:

4 "Q Who owes you money?

5 "A Names, names I've forgotten. I don't pay any  
6 attention to that. This is the type of business you just  
7 forget about people that owe you money.8 "Q Mr. Eisenberg, you loaned money out and if  
9 people don't pay you back you just forget about it?

10 "A That's right.

11 "Q Have you ever threatened anybody in a situation  
12 where --13 "A No, siree, I'm not a gangster by any means and  
14 never threatened anybody in my life.

15 \*\*\*

16 "Q But you stated, Mr. Eisenberg, that a number of  
17 your loans are still outstanding, is that correct?18 "A If they are outstanding, if I get my money, I'm  
19 happy to get it. I don't go looking for it. When they  
20 have it, they come and pay me. I don't threaten anybody  
21 and I don't say you must pay me or anything like that."22 The charges under Count 2 relate to this series  
23 of questions and answers:24 "Q You had known these people a number of years,  
25 right?

2 "A Yes, they always pay me.

3 "Q You must know their last names, some of them.

4 "A No, I don't know their last names. I don't  
5 know of anybody's last name as a matter of fact. In this  
6 business nobody gives you a last name."

7 The charges under Count 3:

8 "Q Is \$500, Mr. Eisenberg, the total amount you  
9 have ever lent any individual?

10 "A Any individual?

11 "Q Yes, at one time.

12 "A Well, I've loaned -- I've loaned somebody more  
13 than that, but a friend.

14 "Q Who?

15 "A A friend. I wouldn't divulge his name because  
16 he wouldn't like the idea.

17 "Q Mr. Eisenberg, you are going to be required to  
18 divulge his name because the Grand Jury immunity order  
19 says that you must answer all our questions.

20 "Now would you please tell us the name of the  
21 individual to whom you have lent money more than \$500.

22 "A I'm trying to remember. I can't remember who  
23 I loaned \$500. It's not easy --

24 "Q I will ask you again.

25 "You just indicated that you don't want to give

1 dhjb

2 us the name of the individual who you lent a lot of money  
3 to because he's a friend of yours.

4 "What is the name of that friend?

5 "A The name of the friend?

6 "Q Yes.

7 "A Is it permissible for me -- must I tell you?

8 Maybe this man doesn't want to know who -- he don't want his  
9 name involved. He's a married man, he has a family.

10 "Q Mr. Eisenberg, you are required because of the  
11 fact that you have been granted immunity to give us the  
12 name of that individual.

13 "A His name is Jack.

14 "Q Jack what?

15 "A I don't know his second name.

16 "Q Where does he live?

17 "A I don't know where he lives.

18 "Q He's a friend of yours and you don't know his  
19 last name?

20 "A I know many people. I don't know their last  
21 name. I know them for many years and they never tell me  
22 their last name."

23 The charges under Count 4:

24 "Q How much do you usually lend money at?

25 "A I loan these people money so they could straighten

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2 out their gambling --

3 "Q You did not answer my question.

4 "How much do you lend them money at, what rate?

5 "A I don't lend them money at any rate. I only  
6 lend them money to get them even up with their debts so  
7 they can continue playing.

8 "Q Mr. Eisenberg, you never loaned anybody money  
9 and charged them interest?

10 "A If I did?

11 "Q Yes.

12 "A I possibly did, yes.

13 "Q On occasions then you did loan people money and  
14 charged them interest?

15 "A On occasions, yes, I did.

16 "Q How much interest?

17 "A I don't remember."

18 Now, Count 5:

19 "The Grand Jury further charges:

20 "1. On or about May 6, 1975 in the Southern Dis-  
21 trict of New York, Benjamin Eisenberg, the defendant, un-  
22 lawfully, wilfully and corruptly did obstruct and impede  
23 the due administration of justice in the manner herein-  
24 after described.

25 "2. On or about May 6, 1975, Benjamin Eisenberg,

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2 the defendant, who had previously received a grant of  
3 immunity pursuant to Title 13, United States Code, Section  
4 6002, appeared as a witness before a grand jury in the  
5 Southern District of New York, which was then and there  
6 inquiring into possible violations of United States laws  
7 prohibiting extortion, loansharking and racketeering and  
8 other federal statutes.

9 "3. It was material to the investigation de-  
10 scribed in paragraph 2 hereof, that the Grand Jury ascertain  
11 (a) the knowledge and the extent of participation by the  
12 defendant Benjamin Eisenberg and others in situations where-  
13 in usurious loans and extensions of credit had been made;  
14 (b) the knowledge and the extent of participation by the  
15 defendant Benjamin Eisenberg and others in transactions  
16 wherein extortionate means were used in the collection of  
17 extensions of credit; and (c) the identities of persons  
18 to whom the defendant Benjamin Eisenberg and others  
19 associated with him, had loaned sums of money at usurious  
20 rates of interest.

21 "4. On or about the 6th day of May, 1975,  
22 Benjamin Eisenberg, the defendant, having duly taken an  
23 oath that he would testify truthfully as a witness before  
24 (Continued on next page.)

25

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2 the aforesaid Grand Jury, a body authorized by law to  
3 administer an oath, did give false and evasive answers to  
4 questions asked of him as hereinafter set forth.

5 "Q On occasions then you did loan people money and  
6 charged them interest?

7 "A On occasions, yes, I did.

8 "Q How much interest?

9 "A I don't remember.

10 "Q Who was the last person you lent money to, Mr.  
11 Eisenberg?

12 "A I don't recollect.

13 "Q When was the last time you lent somebody money?

14 "A I still don't remember that.

15 \*\*\*

16 "Q How long have you been lending money at interest  
17 rates, charging interest?

18 "A Any time it happens --

19 "Q Just approximately how many years have you been  
20 lending people money?

21 "A Maybe three years, maybe five years. I don't  
22 remember when things happened when you're in this business.  
23 People --

24 "Q So you only lent people money within the last  
25 three to five years, is that what you are telling the Grand

2 Jury?

3 "A Maybe I loaned them money 20 years ago. I can't  
4 recollect that. Who could remember that far back.5 "Q I think you could remember. If you loaned some-  
6 body money, you should remember who you lent money.7 "A No, I don't remember. No. Every day is a new  
8 day and there is so many -- so much involved with each day  
9 that I do things that I can't remember. It just falls --  
10 it just gets out of your memory. I sometimes don't remember  
11 what happened the day before.

12 \*\*\*

13 "Q Given your assertion that it was somewhere  
14 between two and 15 years ago that you first lent money to  
15 any individual at any rate of interest, could you please  
16 name for the Grand Jury some of the people to whom you  
17 have lent money over the years? \*

18 "A I couldn't remember anything like that.

19 "Q How many people have you lent money to?

20 "A How many? That's another question. It could  
21 be three, it could be five. I can't remember people that  
22 I loaned money to.

23 "Q Could it be more than five?

24 "A I don't know. I really -- you're asking me  
25 questions that sound very vague to me. I can't --

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2 "Q No, I am asking you a very specific question.  
3 I am asking you could the number of people that you have  
4 lent money to be more than five.

5 "A Could it be more than five?

6 "Q Yes.

7 "A I couldn't say.

8 "Q Could it be more than ten?

9 "A It could be ten, it could be 15, it could be  
10 three. I don't know.

11 "Q Let's take it one at a time.

12 "Could it be more than five?

13 "A Could it be more than five people?

14 "Q Yes.

15 "A Yes, it probably could.

16 "Q Could it be more than ten?

17 "A Well, I don't believe it could be more than ten.

18 "Q So your testimony is now that it was probably  
19 between five and ten people?

20 "A That's correct. As far as I could recollect.  
21 I can't specifically make a statement like that without  
22 really knowing how many people I loaned money to.

23 "Q Of the five or ten people that you may have lent  
24 money to, could you please name some of those people?

25 "A These are people that gamble. They come today

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2 and they're gone tomorrow.

3 "Q How would you collect your money?

4 "A Well, in the course of business. And then sud-  
5 denly they disappear and you don't get paid.

6 "O You must know their names.

7            "A    Again, I could say Whity, Lefty. They come and  
8 go and they're always -- they never tell you where they  
9 live. You never could contact them. They'll give you a  
10 telephone number where you could call them and you make  
11 arrangements that way, and then if the guy don't pay you,  
12 there is nothing you could do about it. He just disappears  
13 into thin air.

14

★ ★ ★

15 "Q Is it your testimony that you cannot remember  
16 any of the names of the people to whom you lent money?

17 "A I say I don't remember their names. I remember  
18 Lefty, Whity, Joey. That's the way they operate in this  
19 business.

20 "O Where did you know Whity from?

21 "A Whity?

22 "Q Yes.

23 "A I kn

23 "A I knew him from going into a bar, having a  
24 drink, meeting him. You're in the business where you con-  
25 duct business, where you get customers.

2 "Q What bar?

3 "A Any bar, you know. You go in the midtown area,  
4 you go in the theatrical area. You frequent bars where  
5 you meet people --

6 "Q Wh~~o~~ business? What business was Whity in?

7 "A He's a gambler like myself. They usually gamble.

8 "Q When was it that you lent money to Whity?

9 "A Oh, I don't know. I don't remember that.

10 \*\*\*

11 "Q When you loaned people money, Mr. Eisenberg,  
12 how did you go about collecting the money?

13 "A By word of honor.

14 "Q Where did you actually collect the money,  
15 physically?

16 "A We'd meet in the street, always in the street,  
17 always at a bar or other -- if he'd come there -- if he  
18 paid me. You took your chances with people like that.  
19 You gave them a rate of interest, and the chances are that  
20 you get your money back. In the long run, they wouldn't  
21 pay you. They'd just forget about it and there is nothing  
22 I could do about it.

23 \*\*\*

24 "Q Does anybody owe you money still, right today?

25 "A Well, they owe me money, but I don't see these

2 people and they don't pay me.

3 "Q Who owes you money?

4 "A Names, names I've forgotten. I don't pay any  
5 attention to that. This is the type of business you just  
6 forget about people that owe you money.

7 \*\*\*

8 "Q Mr. Eisenberg, you loaned money out and if people  
9 don't pay you back you just forget about it?

10 "A That's right.

11 "Q Have you ever threatened anybody in a situation  
12 where --

13 "A No, siree, I'm not a gangster by any means and  
14 never threatened anybody in my life.

15 \*\*\*

16 "Q Let me state it very, very specifically.

17 "I don't care what your intentions were or what  
18 the intentions of anybody else were. I don't care why you  
19 may have been speaking with somebody. All I want to know  
20 is the answer to this question and I will ask you for a  
21 yes or no answer.

22 "Have you during the last 12 months had any con-  
23 versation with any individual who has owed you money as a  
24 result of a debt on a loan that you made to that individual?

25 "A Well, there are people that owe me money and I

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2 always go and try to get my money which they pay me. I  
3 don't have any problems collecting my money with honest  
4 people.

5 "But if there is somebody that owes me and dis-  
6 appears, I can't collect the money and I can't -- I don't  
7 know where to find them. But I don't have any problems  
8 with people that I know what I deal with.

9 "Q Like who?

10 "A Well, friends.

11 "Q Like who?

12 "A People I know.

13 "Q Like who? I want names.

14 "A Well, I don't think these people would like the  
15 idea that I gave them -- their names that I loaned them  
16 money.

17 "Q Mr. Eisenberg, as much as I may want to defer  
18 to your personal relationships with other people, this Grand  
19 Jury is not interested in what other people think. This  
20 Grand Jury is interested in finding out who you have lent  
21 money to.

22 "A Okay. I've loaned money to people that I know  
23 for many years.

24 "Q Mr. Eisenberg, we're trying to get names not  
25 generalities. So would you please give us the names of

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2 the people to whom you have lent money.

3 "A Names like Joe and Andy and Sammy. People I  
4 know.

5 "Q You said that on some people that you know you  
6 had no problems collecting.

7 "A Yes.

8 "Q You had known these people a number of years,  
9 right?

10 "A Yes, they always pay me.

11 "Q You must know their last names, some of them.

12 "A No, I don't know their last names. I don't  
13 know of anybody's last name as a matter of fact. In this  
14 business nobody gives you a last name.

15 \*\*\*

16 "Q Have you collected money from any individual  
17 during the last six years?

18 "A From an individual?

19 "Q Any individual.

20 "A Yes, I have.

21 "Q Who is the individual and where did you collect  
22 the money?

23 "A I just explained to you. I used to meet them  
24 in the street. They'd call me home, I'll meet you so and  
25 so. And I'd go and I'd meet them.

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2 "Q I would like the names of these people.

3 "A Well, they're all names, Lefty, Whity, Frenchie,  
4 people I've known. That way you get introduced that way.  
5 They never give you a second name. And I would meet them  
6 and settle my differences.

7 \*\*\*

8 "Q Is \$500, Mr. Eisenberg, the total amount you  
9 have ever lent any individual?

10 "A Any individual?

11 "Q Yes, at one time.

12 "A Well, I've loaned -- I've loaned somebody more  
13 than that, but a friend.

14 "Q Who?

15 "A A friend. I wouldn't divulge his name because  
16 he wouldn't like the idea.17 "Q Mr. Eisenberg, you are going to be required to  
18 divulge his name because the Grand Jury immunity order says  
19 that you must answer all our questions.20 "Now would you please tell us the name of the  
21 individual to whom you have lent money more than \$500.22 "A I'm trying to remember. I can't remember who  
23 I loaned \$500. It's not easy --

24 "Q I will ask you again.

25 "You just indicated that you don't want to give

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2 us the name of the individual who you lent a lot of money  
3 to because he's a friend of yours.

4 "What is the name of that friend?

5 "A The name of the friend?

6 "Q Yes.

7 "A Is it permissible for me -- must I tell you?  
8 Maybe this man doesn't want to know who -- he don't want  
9 his name involved. He's a married man, he has a family.

10 "Q Mr. Eisenberg, you are required because of the  
11 fact that you have been granted immunity to give us the  
12 name of that individual.

13 "A His name is Jack.

14 "Q Jack what?

15 "A I don't know his second name.

16 "Q Where does he live?

17 "A I don't know where he lives.

18 "Q He's a friend of yours and you don't know his  
19 last name?

20 "A I know many people. I don't know their last  
21 name. I know them for many years and they never tell me  
22 their last name.

23 \*\*\*

24 "Q But you stated, Mr. Eisenberg, that a number of  
25 your loans are still outstanding, is that correct?

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2 "A If they are outstanding, if I get my money I'm  
3 happy to get it. I don't go looking for it. When they  
4 have it, they come and pay me. I don't threaten anybody  
5 and I don't say you must pay me or anything like that.

6 \*\*\*

7 "Q Mr. Eisenberg, when is the last time that you  
8 made an effort to collect money owed you on a loan?

9 "A Made an effort to collect?

10 "I never made an effort to collect any money on  
11 any loan. If a man wants to pay me, he knows where to find  
12 me and he pays me.

13 "Q What is the most any person has ever owed you at  
14 one time?

15 "A Ever? You are asking me the same question.

16 "Q Within the last five years. Mr. Eisenberg. Has  
17 anyone ever owed you \$10,000?

18 "A No.

19 "Q Has anyone ever owed you \$5,000?

20 "A No. As far as I can recollect in the last -- what  
21 did you say, last how many years?

22 "Q Within the last five years.

23 "A Well, you're going back in five years' time.  
24 I can't --

25 "Q Within the last year.

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2 "A Maybe they did -- maybe they had -- I don't  
3 remember. How could I remember these things. These are  
4 transactions that are made and forgotten.

5 "Q What is the most ever anybody has ever owed you?

6 "A I can't recollect that.

7 "Q Was it more than \$50,000?

8 "A Let's forget about that. Of course not.

9 "Q Was it more than \$10,000?

10 "A ~~I~~ don't believe so. I didn't deal in that way.  
11 If a man wanted \$10,000, it was only for overnight and I  
12 could get it for him --

13 "Q So you have lent somebody \$10,000?

14 "A I don't remember. If I did, I did, but I can't  
15 recollect."

16 Briefly, as indicated by the indictment I have  
17 read to you, the defendant on trial has been charged by the  
18 Government with criminal offenses of perjury and obstruction  
19 of justice, not any other crimes.

20 It is your recollection of the facts that counts  
21 here, not the recollection of counsel and not my recol-  
22 lection. It is for you to determine the weight that you  
23 will give to the evidence, the credibility that you will  
24 extend to the witnesses who testified, and the reasonable  
25 inferences that are to be drawn from the evidence that has

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2 been received.

3 You have heard the summations of counsel. If  
4 your recollection differs from that of counsel or from my  
5 recollection, if I should refer to any evidence, your  
6 recollection and the judgment of the facts that you make  
7 control.

8 You must approach your duty with an attitude of  
9 complete fairness and impartiality, one in which you reach  
10 your decision solely on the evidence in the trial and  
11 without the slightest trace of sympathy, prejudice or bias  
12 as either for or against the Government or the defendant.

13 The fact that the Government is a party here  
14 entitles it to no greater or no less consideration than that  
15 accorded to any party in a Court of the United States.  
16 All parties are equals at this bar of justice.

17 It is my province to instruct you as to legal  
18 principals that are to be followed in the case, and it is  
19 your duty to accept those instructions as they are given  
20 to you by me.

21 On the other hand, it is your exclusive function  
22 to determine the facts on the basis of your consideration  
23 of the evidence and then, applying the instructions as to  
24 the law that I am about to give you, to decide whether or  
25 not the defendant on trial before you is guilty of the

2 charges made against the defendant.

3 You are the sole and exclusive judges of the facts  
4 and your decision as to the fact is final and conclusive.

5 During the trial I was called upon to make rul-  
6 ings on various questions, such as when a question put to  
7 a witness was objected to and after a question was answered  
8 a motion was made to strike the answer. I sustained some  
9 objections and I overruled others. I struck out answers  
10 and exhibits that were offered. It is essential in the  
11 performance of your duty that when anything was ordered  
12 stricken from the record, you put it out of your mind and  
13 disregard it.

14 Similarly, if a question was asked and an object-  
15 ion to that question was made and sustained and no answer  
16 was given, the question itself should play no part in your  
17 consideration of the case.

18 No inferences as to the guilt or innocence of the  
19 defendant on trial, or as to the credibility of any wit-  
20 ness, should be drawn from any rulings that I have made  
21 or from the fact that upon occasion I asked questions of  
22 certain witnesses. My questions were intended only for  
23 clarification or to expedite matters. They were not  
24 intended to suggest any opinions as to the guilt or inno-  
25 cence of the defendant or as to the credibility of anyone

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2 who appeared before you. It is neither my intention nor  
3 function to favor one side or the other or to imply that  
4 I have any views as to the credibility of any of the wit-  
5 nesses or as to the guilt or innocence of the defendant.  
6 That's your sole and exclusive function.

7 As I have indicated earlier, the indictment here  
8 is but a formal method of accusing the defendant of a  
9 crime or crimes and bringing the case into Court for trial  
10 and determination. It is not any evidence that a crime  
11 or crimes has been committed and no inference of any kind  
12 may be drawn from the indictment. The grand jury which  
13 returned the indictment was not asked to find out if the  
14 defendant was guilty. That's solely your function and  
15 duty.

16 The defendant before you has pleaded not guilty.  
17 That means that the Government has the burden of proving  
18 guilt beyond a reasonable doubt with respect to each crime  
19 that the defendant is accused of having committed. That  
20 burden never shifts.

21 A defendant is under no obligation to undertake  
22 to prove his innocence. Indeed, a defendant does not have  
23 to submit any evidence at all. On the contrary, under  
24 our law, a defendant is presumed to be innocent of any  
25 charge laid against him in the indictment. That presumption

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2 existed when the indictment was handed down, and remains  
3 throughout the trial, and in your deliberations. It is a  
4 presumption which is sufficient in itself to require an  
5 acquittal of the defendant unless you, the jury, on all  
6 the evidence are convinced of his guilt beyond a reason-  
7 able doubt.

8 A reasonable doubt is one that arises out of the  
9 evidence in the case or the lack of evidence. It is a  
10 doubt which is not merely shadowy. A reasonable doubt  
11 is one that appeals to your reason, to your judgment, to  
12 your common sense and your experience. It is not an excuse  
13 to avoid performance of an unpleasant duty. A reasonable  
14 doubt is such as would cause prudent people to hesitate  
15 before acting in matters of importance to them.

16 Putting that a little differently, if you are  
17 confronted, as indeed you are here, with an important  
18 decision, and after reviewing all the factors that are  
19 pertinent to that decision you find yourself beset by  
20 uncertainty and unsure of your judgment, then you have a  
21 reasonable doubt.

22 Conversely, in that same situation, if you have  
23 taken into account all the elements that pertain to the  
24 problem and you find you have no uncertainty and no reser-  
25 vation about your judgment, then you have no reasonable

2 doubt.

3 Proof beyond a reasonable doubt does not mean  
4 proof to a positive certainty or proof beyond all possible  
5 doubt. If that were the rule, few persons, however guilty,  
6 could ever be convicted. It is practically impossible for  
7 a person to be absolutely and completely convinced of any  
8 fact which in its nature is not susceptible of mathemati-  
9 cal certainty. So that kind of certainty, as I have tried  
10 to indicate, is not the testimony. You are going to have  
11 to rely upon your own common sense and general experience  
12 in evaluating the evidence.

13 There are, generally speaking, two types of evi-  
14 dence from which a jury may properly find the truth in the  
15 facts of the case. One is direct evidence, such as the  
16 testimony of an eyewitness or a participant. The other  
17 is indirect or circumstantial evidence, the proof of a  
18 chain of circumstances pointing to the existence or non-  
19 existence of certain facts.

20 In order to prove a fact by circumstantial evi-  
21 dence, there must be positive proof of some fact which,  
22 though true, does not itself directly establish the fact  
23 in dispute but does afford basis for a reasonable inference  
24 of its existence.

25 The fact or facts upon which it is sought to

base an inference must be shown and not left to rest in conjecture; and, when shown, it must appear that the inference drawn is the only one that can fairly and reasonably be drawn from the facts, and that any other explanation is fairly and reasonably excluded.

Now, let me give you a common example of circumstantial evidence so that you will understand what I have been saying.

Suppose this morning when you came into Court the sun was shining and there were no clouds in the sky, and when you came into this trial courtroom the shades were drawn and the blinds were down so that you couldn't see outside. And pretty soon someone came through that door, walking into the courtroom with a dripping umbrella and a dripping raincoat.

You haven't been outside in the meantime. When left outside it was clear, but when this person came in with his dripping umbrella and raincoat, your mind is led to believe that something may have happened outside. You would be entitled to infer from the circumstances that there is a dripping umbrella and a raincoat, that's a fact, you would be entitled to infer that it is raining outside.

Thus, circumstantially you infer from a fact, the dripping raincoat and umbrella, some other matter, the rain

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2 outside. The mind is led circumstantially from a fact to  
3 reach another fact.

4 That will give you an illustration of what cir-  
5 cumstantial evidence is and what it may lead to.

6 It is not necessary that the participation or  
7 lack of participation of a defendant in any crime be shown  
8 by direct evidence. The connection may be inferred from  
9 such facts and circumstances as legitimately tend to sus-  
10 tain that inference.

11 In this case, of course, there has been both direct  
12 and indirect or circumstantial evidence. The Government  
13 contends that its evidence establishes the defendant's guilt.  
14 The defendant contends that no evidence has overcome the  
15 presumption of his innocence and that at least there is a  
16 reasonable doubt of his guilt.

17 You will apply to all the evidence the same  
18 standard of proof that must satisfy you of the guilt of  
19 the defendant beyond a reasonable doubt, or else you must  
20 acquit the defendant.

21 In evaluating the evidence which has been placed  
22 before you, you will determine the reliability of the  
23 witnesses you have heard and the extent to which you count  
24 on any or all of them for accurate accounts of the facts.

25 You had an opportunity to observe the witnesses

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2                   as they testified. You want to be asking yourselves and  
3                   thinking together how did each witness impress you? Did  
4                   the witness appear to be truthful, candid, frank, forth-  
5                   right? Did the witness seem evasive or shifty or suspect  
6                   in any other way?

7                   Did the witness appear to know what he was talk-  
8                   ing about and did he impress you as having a purpose to  
9                   report his knowledge to you truthfully and accurately?  
10                  Was he consistent or self-contradictory? How did the manner  
11                  and matter of his direct testimony compare with his manner  
12                  and matter of testimony tested on cross examination?

13                  You should consider not only the intrinsic  
14                  persuasiveness of each person's testimony by itself but  
15                  its setting in the circumstances of the whole case.

16                  Next, the degree to which any particular item of  
17                  testimony is corroborated or contradicted by other evi-  
18                  dence in the case, and all such things, you would test  
19                  by your own mature judgment, about life and about people  
20                  and about human behavior.

21                  A witness may be discredited or, as we say,  
22                  impeached by contradictory evidence or by evidence that  
23                  at other times he made statements inconsistent with his  
24                  testimony on the witness stand.

25                  You should consider, among other things, the

2 question of interest or motive, if any. The witnesses have  
3 identified their backgrounds and associations. You may wish  
4 to consider whether the witness may have had inducements  
5 or incentives or motives to shade the truth or had biases  
6 of one kind or another that have made the witness, con-  
7 sciously or not, to give you less than a completely accurate  
8 account of the facts he purported to portray.

9           If you believe a witness has wilfully sworn  
10 falsely before you, you are free to disregard all his testi-  
11 mony, or you may choose to accept and credit such parts  
12 of it as your judgment dictates should be accepted.

13           The fact that there has been a prior conviction  
14 of a felony doesn't render a witness incompetent to testify.  
15 It is merely a circumstance which you may consider in  
16 determining the credibility of the witness.

17           The defendant did not testify on his own behalf and  
18 our law says he is privileged to testify or not to testify  
19 as he wishes. The failure to testify cannot be considered  
20 by you as evidence against him, or form a basis for any  
21 presumption or inference unfavorable to him. A defendant  
22 is not required to establish his innocence.

23           So much for the general rules of law. Now let's  
24 turn to the specific statutes that underly the charges in  
25 this indictment.

8                    "Whoever under oath in any proceeding before...any  
9                    Court or grand jury cf the United States knowingly makes  
10                  any false material declaration..." is guilty of a crime.

Simply stated, perjury is the wilful giving of  
false testimony as to a material matter before a competent  
tribunal while under oath.

14                   In order to sustain its burden of proof against  
15                   the defendant, Benjamin Eisenberg, on the perjury counts,  
16                   the Government must establish beyond a reasonable doubt  
17                   these essential elements:

18 One. That on or about May 6, 1975, Benjamin  
19 Eisenberg took an oath to testify truthfully before a  
20 grand jury sitting in this, the Southern District of New  
21 York, a body authorized by law to administer oaths;

22 Two. That Benjamin Eisenberg made false state-  
23 ments as to matters about which he testified under oath  
24 as set forth in the indictment;

25 Three. That such false statements were wilfully

2 and knowingly made in that at the time the defendant made  
3 these statements he knew them to be false; and

4 Four. That the matters as to which it is charged  
5 he made the false statements were material to the issues  
6 under inquiry by the grand jury.

7 In the present case, the evidence shows, and  
8 there's no dispute, that on May 6, 1975, Benjamin Green-  
9 berg did appear before the grand jury in the Southern  
10 District of New York; that he was under oath to testify  
11 truthfully before the grand jury, and that the grand jury  
12 was authorized by law to administer oaths.

13 The evidence also shows, and it is not disputed,  
14 that the defendant gave the testimony which he is alleged  
15 in the indictment to have given.

16 Further, I charge you as a matter of law that  
17 the matters about which the defendant testified as set  
18 forth in the indictment were material to issues under in-  
19 quiry by the grand jury before whom the testimony was given.  
20 The issue of materiality is one for the Court and is not  
21 a question of fact for the jury.

22 Hence, you need not concern yourself with the  
23 first and fourth elements of the perjury counts, which I  
24 have just outlined for you.

25 You must direct your attention to the second

2 and third elements which I have outlined and they raise the  
3 following two questions for you to consider with respect to  
4 each perjury count of the indictment.

5 One. Was the part of the testimony given by the  
6 defendant, as set forth in the first four counts of the  
7 indictment, false?

8 Two. Did the defendant give any part of the tes-  
9 timony wilfully and knowing at the time that it was false?

10 The Government must establish beyond a reasonable  
11 doubt the existence of facts which show that the defendant's  
12 testimony concerning these facts was false. In other words,  
13 the Government must establish what it maintains are the  
14 true facts, and in that connection, the Government called  
15 the witnesses whom you have heard, who testified to their  
16 alleged transactions with this defendant.

17 Now, as I have indicated, when I say that the  
18 "falsity" of the defendant's testimony must be established,  
19 I mean that the falsity of the set of facts in the defen-  
20 dant's testimony before the grand jury must be established.  
21 The evidence offered to establish this falsity need not,  
22 and in most cases will not, come from a witness who knows  
23 what a defendant's actual testimony was before the grand  
24 jury, or in fact whether or not a defendant testified at  
25 all.

1 dhjb 33

2 Under the perjury statute, proof beyond a reasonable  
3 doubt of the elements of the crime of perjury, as I  
4 have given them to you, is sufficient for a conviction.  
5 It is not necessary that such proof be made by any particular  
6 number of witnesses or by any specified documentary or  
7 other type of evidence.

8 Of course, the jury must determine whether the  
9 defendant, Benjamin Eisenberg, knew what the questions  
10 meant at the time he testified before the grand jury. If  
11 you find that the questions posed before the grand jury  
12 were vague and ambiguous, then it would be impossible for  
13 you to determine in an objective sense what the questions  
14 meant to the defendant at the time he answered the questions.

15 The rule of falsity I have outlined above is  
16 satisfied if the Government proves falsity beyond a reasonable  
17 doubt of any one assignment of perjury in the count in  
18 the indictment that you are considering. By this I mean  
19 that it is enough if the Government shows that just some  
20 of the testimony cited in each of the four perjury counts  
21 in the indictment was false.

22 Thus, the perjury counts contain answers given by  
23 the defendant reciting more than one fact. It is not necessary  
24 that the Government prove that each of these factual  
25 statements is false. It is sufficient if the Government

2 proves, or has proved, that at least one factual statement  
3 is false.

4 The law, of course, recognizes no excuse and no  
5 justification for perjury. A witness is compelled by law  
6 to testify truly under oath before a competent tri-  
7 bunal.

8 In this regard, I wish to remind you of the  
9 important function served by the law against perjury and  
10 false declarations. In the administration of justice, all  
11 of us are bound by oaths. You have, each of you, taken an  
12 oath. You raised your hands when you were sworn as jurors  
13 to well and truly try this case and render a just and true  
14 verdict based on the evidence, so help you God. I have,  
15 so has the special attorney and so has the counsel for the  
16 defendant, and every witness who has been on the witness  
17 stand has taken an oath. I took an oath as a judge to  
18 administer justice to all, and equally. The lawyers took  
19 an oath when they became lawyers.

20 The administration of justice depends upon respect  
21 for the sanctity of the oath. When one is charged with  
22 the crime of perjury, he is charged with violating an im-  
23 portant law, one which is at the heart of our administration  
24 of justice.

25 Now, turning to the fifth count of the indictment,

1 dhjb 35

2 the count which charges obstruction of justice, the jury  
3 would have to find beyond a reasonable doubt the following  
4 elements:

5 One. On or about May 6, 1975, the grand jury  
6 was conducting an investigation to ascertain the knowledge  
7 and extent and participation by the defendant and others  
8 of situations wherein usurious loans and extensions of  
9 credit had been made and of any transactions wherein ex-  
10 tortionate means were used to collect extention of credit,  
11 and the identities of persons to whom the defendant and  
12 others associated with him had loaned sums of money at  
13 illegally usurious rates of interest;

14 Two. That on or about May 6, 1975, the defendant  
15 wilfully and knowingly gave false or evasive testimony in  
16 respect to that investigation;

17 Three. That the testimony that the defendant  
18 gave on or about May 6, 1975, before the grand jury was  
19 material to the matter under investigation; and

20 Four. That the defendant, by such testimony,  
21 corruptly, wilfully and knowingly endeavored to obstruct  
22 or impede the due administration of justice.

23 In determining the guilt of the defendant under  
24 Count 5, evidence has been presented from which you may  
25 find that the grand jury was conducting the described

2 investigations.

3                   Specifically, on May 6, 1975, an investigation  
4 into the possible violation of United States laws prohibiting  
5 extortion, loansharking, racketeering and other Federal  
6 statutes.7                   I charge you that you are to determine whether  
8 defendant's testimony was proven to be false or evasive  
9 and that in reaching this determination you may consider  
10 the whole of defendant's testimony including any inherent  
11 inconsistencies or irreconcilable contradictions therein.12                  As I told you when I discussed the first four  
13 counts of the indictment, the perjury counts, materiality  
14 is an issue for the Court and not for the jury. Accordingly,  
15 I charge you that the testimony of the defendant before the  
16 grand jury on May 6, 1975, was material to the matters  
17 under investigation on that date.18                  If you find beyond a reasonable doubt that the  
19 defendant gave false or evasive answers as set forth in  
20 Count 5 of the indictment, then you must also determine  
21 whether those false or evasive answers constituted a  
22 corrupt, wilfull and knowing endeavor to obstruct or impede  
23 the due administration of justice.24                  The word "corrupt," however, doesn't add an addi-  
25 tional element to the crime and I charge you as a matter of

1 ahjb 37

2 law that any unauthorized endeavor to obstruct or impede  
3 the due administration of justice violates the law.

4 The law is that the due administration of justice  
5 includes an official inquiry undertaken by a grand jury.  
6 Therefore, the issue is whether there is involved here a  
7 corrupt endeavor to obstruct or impede the official inquiries  
8 undertaken by the grand jury in this instance.

9 I also charge you as a matter of law that ob-  
10 struction of justice includes concealing from a grand jury  
11 information which is relevant and germane to its functions.

12 I also instruct you that you don't have to find  
13 that the defendant was successful in his endeavor to influ-  
14 ence, impede or obstruct the grand jury inquiries. Any  
15 effort or endeavor, whether successful or not, which is  
16 made for the purpose of corruptly, wilfully and knowingly  
17 obstructing or impeding the proceeding is condemned.

18 It has been stated frequently that you bring  
19 into the jury box with you the common sense and experience  
20 of your daily lives. You don't check your common sense  
21 outside the jury box when you sit down. It is obviously  
22 impossible to ascertain or prove directly what was the  
23 operation of the mind, the intention of the defendant.  
24 You cannot look into a persons' mind to see what his  
25 intentions are or were. But a wise and intelligent

1 dhjb 38

2 consideration of all the facts and circumstances, shown by  
3 the evidence and the exhibits in the case, will enable you  
4 to infer, with a reasonable degree of accuracy, what were  
5 the defendant's intentions at the time he gave the grand  
6 jury testimony involved in this case.

7 Intent involves a mental attitude. With a knowl-  
8 edge of a definite act and surrounding circumstances, you  
9 may draw definite and logical conclusions.

10 In our everyday affairs, we are constantly called  
11 upon to decide from the acts of others what their intentions  
12 are. Experience has taught us that frequently acts speak  
13 louder than words, more clearly than spoken or written  
14 words. Therefore, you may well rely in part on circum-  
15 stantial evidence in determining the guilt or innocence of  
16 the defendant in this case.

17 Proof of the circumstances surrounding a man's  
18 actions can supply an adequate basis for a finding that a  
19 defendant acted knowingly and wilfully. The actions of man  
20 must be set in their time and place. Just as the meaning  
21 of a word is understood only in its relation to other words  
22 in a sentence, so the meaning of a particular act may de-  
23 pend on the circumstances surrounding it.

24 Thus, you may consider evidence which you recall  
25 and believe about the defendant's actual knowledge of

1 dnjb 39

2 certain facts and occurrences as compared to the testimony  
3 he gave about those facts and circumstances, the extent to  
4 which statements were made to conceal facts or events;  
5 and, in general, the manner in which certain actions were  
6 undertaken by the defendant.

7 Now we are almost through.

8 You will recall that in stating the elements I  
9 said that before you can convict the defendant of the  
10 crimes charged in the indictment, you must, as one of the  
11 elements, find beyond a reasonable doubt that he acted  
12 "knowingly" and "wilfully". The false declarations statute  
13 provides that the defendant is guilty of the crime when  
14 he "knowingly makes any false material declaration."

15 What do those words, "knowingly" and "wilfully"  
16 mean? First, let me tell you what those words do not mean.  
17 They don't mean that the Government has to show that the  
18 defendant knew he was breaking a particular law before  
19 he can be convicted of a crime. They do not mean that the  
20 Government has to show that the defendant intended to profit  
21 at the expense of the Government or any other person.  
22 Nor do they have anything to do with the defendant's per-  
23 sonal or private reasons for violating the statute. For  
24 if, after considering all the evidence in accordance with  
25 my instructions to you, you come to the conclusion that the

1 dhjb 40

2 defendant violated the statute, then the defendant's per-  
3 sonal or private reasons for violating the statute are of  
4 no consequence so far as his guilt is concerned.

5 The words "knowingly and "wilfully" mean deliber-  
6 ately; they mean intentionally; they mean that the defendant  
7 made the false statement or false statements with knowledge  
8 that the statements were false, that he intended to make a  
9 false statement consciously and in the free exercise of his  
10 will. Those words, "knowingly and wilfully" are opposed  
11 to the idea of an inadvertent or accidental misstatement.

12 For example, if the defendant, by innocent mis-  
13 take, made an erroneous or incorrect statement, he would  
14 not be guilty of the crime charged. If he made an erroneous  
15 or incorrect statement due to a slip of the tongue or bad  
16 memory, truly bad memory, or through a misunderstanding, he  
17 would not be guilty of knowingly and wilfully making a false  
18 declaration.

19 But if, at the time the defendant gave testimony  
20 before the grand jury, he was aware of the fact that he was  
21 making a false statement and if he knew and believed that  
22 his statement was false at the time he made it, then he  
23 was acting knowingly and wilfully, as these terms are used  
24 in the statute governing the crime of false declarations.

25 Ladies and gentlemen, in reaching your conclusion

1 unju 41

2 in this case, use your common sense in evaluating the evi-  
3 dence, the circumstances and the probabilities. Don't allow  
4 yourselves, or any of you, to be swayed or carried away or  
5 inflamed by appeals to passion or sympathy or bias.

6 Suspicion and conjecture shouldn't be substituted  
7 for proof or prejudice. You must maintain a calm, clear  
8 view of the case and not be sidetracked by anything or  
9 anybody from a fair, dispassionate consideration of the  
10 evidence in arriving at your resolution of the facts.

11 I want you to listen to each other carefully in  
12 the jury room when you consider the matter. If, after dis-  
13 cussion, you think you are wrong and somebody else is right,  
14 don't be embarrassed about changing your opinion, but re-  
15 member each of you has to decide the case for yourself.

16 Each count as to the defendant must be considered  
17 separately. The verdict of guilty or not guilty as to any  
18 count on which the defendant is charged to be acceptable  
19 must be unanimous.

20 If you desire the indictment or any of the ex-  
21 hibits, those will be sent to you in the jury room upon  
22 request.

23 If you want any of the testimony read, that can  
24 be done, also. Please don't communicate with me or anyone  
25 else in this case, except in writing signed by your foreman,

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2 Miss Petrosino, and she will be provided with a pencil and  
3 paper.

4 I would like to take a moment to talk to the law-  
5 yers at the side bar. They may wish to call to my attention  
6 any matter which I have overlooked or where I may have mis-  
7 spoken. And I will ask you to relax for a moment while I  
8 do that.

9 (At the side bar.)

10 THE COURT: Are there any exceptions or requests  
11 on the part of the Government?

12 MR. SPEISER: The Government only requests that  
13 you didn't charge the jury on request 24 introduced by the  
14 Government, possible punishment.

15 THE COURT: Well, I don't think it is necessary  
16 to discuss punishment in this case. While it is an en-  
17 tirely appropriate charge, I don't think it is needed.

18 Are there any exceptions or requests on the part  
19 of the defendant?

20 MR. WASHOR: There are no exceptions, your Honor.  
21 The only request would be the general tenor as to those  
22 matters that were submitted by the written requests; some  
23 you did include in your charge, I noticed. I didn't want  
24 to flip the papers during the charge because it makes  
25 noise. I assume that which has been charged in your own,

1 dhjb 43

2 language is deemed requested and accepted by you. Those  
3 which are not are denied, I assume.

4 THE COURT: No. If there is anything that you  
5 consider appropriate to be charged, this is the time for  
6 you to be specific about it, because this is the time when  
7 that can be corrected, if it needs correction.

8 My impression is that the defendant's requests  
9 to charge have been covered in the charge as delivered.  
10 There is one request, I think it was number 4, which was  
11 specifically covered and which seems to be a recurrent  
12 theme throughout several of the defendant's requests.

13 If there is, however, anything that has been  
14 omitted, that is material, that has not been covered, in  
15 other words, you can call it to my attention now.

16 MR. WASHOR: Request number 7, based upon the  
17 Bronston case.

18 THE COURT: It seems to me that has been covered  
19 in substance in the main charge and I decline to charge it  
20 further on the same subject.

21 MR. WASHOR: Surely, your Honor.

22 I believe I am required to except to the Court's  
23 ruling.

24 Your Honor, you, by inadvertence, I assume, have  
25 called the defendant Benjamin Greenberg on two occasions.

1 dhjb 44

2 I just think that you might correct that. I think you  
3 ought to correct it.

4 THE COURT: All right. I will correct that.

5 MR. WASHOR: Thank you.

6 MR. SPEISER: Your Honor, I would like to make  
7 one statement at this time: You properly instructed the  
8 jury that should they request or have any of the exhibits  
9 submitted to them, they may have those. With respect to  
10 the grand jury transcript or the testimony of Benjamin  
11 Eisenberg, there is one portion on page 55 in which he  
12 himself responds that he was arrested and pled guilty to a  
13 crime.

14 THE COURT: Take it out.

15 MR. SPEISER: I have prepared a redacted portion  
16 but Mr. Washor has agreed, and I would like him to state on  
17 the record that he has no objection, to the entire tran-  
18 script going in to the jury including that reference to  
19 his arrest.

20 MR. WASHOR: Absolutely I object to the redaction.  
21 I utilized it in final argument.

22 THE COURT: Wait a minute. You don't want it  
23 redacted?

24 MR. WASHOR: That is correct.

25 THE COURT: Why do you care?

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2 MR. SPEISER: I don't care but I want him to state  
3 that on the record because there is a case in the circuit.

4 THE COURT: Mr. Washor is telling you that the  
5 exhibit in its unredacted form is satisfactory to go to the  
6 jury if the jury requests the grand jury minutes.

7 MR. SPEISER: Fine.

8 THE COURT: That's correct, isn't it?

9 MR. WASHOR: That's very much correct.

10 THE COURT: All right. That's the end of it.

11 (In open Court.)

12 THE COURT: My attention has been called to a  
13 slip of the tongue. I referred to the defendant, who is  
14 Benjamin Eisenberg, as Benjamin Greenberg on one or more  
15 occasions. I am referring to the defendant Benjamin Eisen-  
16 berg on all occasions.

17 Now, since all of the jurors, the 12 jurors, are  
18 present, I am going to at this time excuse from further  
19 participation the two alternates, Miss Denemeskeri, and  
20 Mr. Johnson. Thank you very much for attending. You are  
21 now excused. The Clerk will give you your cards. Please  
22 report to Room 109 for further instructions.

23 (Two alternate jurors excused.)

24 THE COURT: The Clerk will swear the marshal.

25 (One Marshal sworn.)

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2 THE COURT: Miss Petrosino, I will give you the  
3 copy of the indictment now, which you may wish to have for  
4 convenience, and you may go out with the jurors and commence  
5 your deliberations.

6 (At 10:55 a.m. the jury retired to deliberate.)

7 MR. WASHOR: Your Honor, would you permit me to  
8 go to Room 318 to continue the trial? The matter of  
9 participation will not involve me in any delay other than  
10 some notice to the Clerk of that part, and within the time  
11 that it takes to get the elevator, I can be here.

12 THE COURT: Yes, we will be in touch with the Clerk  
13 of the part. And we will let you know as you are required.

14 MR. WASHOR: Thank you, sir.

15 MR. SPEISER: Your Honor, have you ruled on the  
16 3500 material that I gave you for in camera inspection?

17 THE COURT: Yes. You furnished all that material  
18 in redacted form and the material which was redacted does  
19 not in my opinion constitute 3500 material. The defendant  
20 has, therefore, received everything that he was entitled to.

21 I am returning your papers to you.

22 MR. SPEISER: Thank you very much, your Honor.

23 (Recess.)

24

25

1 unja 47

2 (Luncheon recess.)

3 (2:45 p.m. - jury present.)

4 BY THE CLERK:

5 Q Madam Forelady, have you agreed upon a verdict?

6 A Yes, we have.

7 Q How do you find the defendant Benjamin Eisenberg  
8 on Count 1?

9 A Guilty.

10 Q Count 2?

11 A Guilty.

12 Q Count 3?

13 A Guilty.

14 Q Could 4?

15 A Not guilty.

16 Q Count 5?

17 A Guilty.

18 Q Members of the jury, listen to your verdict as  
19 it stands recorded. You say that you find the defendant  
20 Benjamin Eisenberg guilty as charged on each of Counts 1,  
21 2, 3 and 5 and not guilty on Count 4.

22 (The jurors, upon being asked, "Is that your ver-  
23 dict?" all answered in the affirmative.)

24 THE CLERK: So say you all.

25 THE COURT: Ladies and gentlemen of the jury, that

1 dnjb 48

2 completes your service in this case. Would you please be good  
3 enough to report back to the Clerk in Room 109 for further  
4 instructions as to your jury duty and any requirement for  
5 jury duty for next week.

6 You are now excused. Thank you.

7 (Jury discharged.)

8 THE COURT: Mr. Washor?

9 MR. WASHOR: Yes, your Honor.

10 I would request, your Honor, that we reserve  
11 motions until the date of sentence.

12 THE COURT: No, you won't reserve until that time.  
13 You can make your motions now or put them in writing in the  
14 usual time. It seems to me that in a matter of this kind  
15 that you may be in a position to deal with them now.

16 MR. WASHOR: Well, your Honor, I would like to  
17 reflect on them and submit a memorandum to the Court within  
18 the prescribed time period. There will be obviously no  
19 delay in that being taken care of.

20 THE COURT: All right. I will do this: I will  
21 advise you now that I regard the evidence sufficient and  
22 the verdict amply justified on the issues of fact that were  
23 submitted to the jury.

24 If there are any other matters that you want to  
25 call to my attention, I suggest you address yourself to

2 those.

3 MR. WASHOR: I see, Judge.

4 THE COURT: A pre-sentence report will be ordered  
5 here and the date for sentence will be March 8, 1976, at  
6 11:00 a.m. Make that March 9th.

7 MR. WASHOR: The same time, your Honor?

8 THE COURT: 11:00 a.m. In courtroom 506.

9 What's the situation as to bail here?

10 MR. SPEISER: Your Honor, I believe there is a  
11 \$7500 cash or surety bond.12 THE COURT: Any reason why that should not be  
13 continued pending sentence?14 MR. SPEISER: The Government has no objection to  
15 that.

16 THE COURT: The bail is continued accordingly.

17 MR. WASHOR: Thank you, sir.

18 \* \* \*

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25

UNITED STATES DISTRICT COURT  
Southern District of New York

UNITED STATES OF AMERICA

Docket Number

75Cr850

-against-

BENJAMIN LISLENBERG,  
Defendant

Judge Poliack

(District Court Judge)  
Defendant's Address:  
7015 Yellowstone Boulevard  
Queens, N.Y.

## NOTICE OF APPEAL

Benjamin Lisenberg

Notice is hereby given that \_\_\_\_\_ appeals to  
 the United States Court of Appeals for the Second Circuit from the  Judgment  order  other  
 (specify)  of conviction \_\_\_\_\_ entered in this action on  March 9, 1976  
 Michael J. Nashor

Date March 10, 1976

Address

Archibald L. Apallach, of Counsel  
11 Park Place  
N.Y.C., N.Y. (10007)  
Tel. 27-0955To: U.S. Attorney  
Southern District of N.Y.

27-0955

Phone Number

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

## TRANSCRIPT INFORMATION - FORM B

## ► QUESTIONNAIRE

## ► TRANSCRIPT ORDER

► DESCRIPTION OF PROCEEDINGS  
FOR WHICH TRANSCRIPT IS  
REQUIRED (INCLUDE DATE).

I am ordering a transcript  
 I am not ordering a transcript  
 Reason:  
 Daily copy is available  
 U.S. Attorney has placed order  
 Other. Attach explanation

Prepare transcript of  
 Pre-trial proceedings  
 Trial  
 Sentence  
 Post-trial proceedings

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ► Method of payment  Funds  CJA Form 21

ATTORNEY'S signature

DATE March 10, 1976

## ► COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and forwarded to Court of Appeals.

Date order received	Estimated completion date	Estimated number of pages.

Date \_\_\_\_\_

Signature \_\_\_\_\_

(Court Reporter)

COPY FOR DEFENDANT

A. WITNESS

208

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA, :  
-against- : 75 CR 850  
BENJAMIN EISENBERG, :  
Defendant. :  
- - - - - x

DEFENDANT'S REQUESTS TO CHARGE

The defendant respectfully requests the Court to include  
the following in its charge to the Jury.

\* \* \* \* \*

REQUEST NO. IV.

This jury must also determine whether the defendant, BENJAMIN EISENBERG, knew what the questions meant at the time he testified before the Grand Jury. If you find that the questions posed before the Grand Jury were vague and ambiguous, then it would be impossible for you to determine in an objective sense what the questions meant to the defendant at the time he answered said questions.

U.S. v. Slutzky, 79 F. 2d 504

U.S. v. Lattimore, 127 F. Supp. 405, aff'd  
232 F. 2d 234

REQUEST NO. V

You must further consider if the answers by BENJAMIN EISENBERG were responsive or unresponsive. If you conclude that the answers by BENJAMIN EISENBERG were unresponsive and reflect a misunderstanding, then BENJAMIN EISENBERG must be found not guilty.

U.S. v. Colbert, 227 F. Supp. 915  
Galano v. U.S. 49 F. 2d 398

REQUEST NO. VI

The Government must prove beyond a reasonable doubt and must affirmatively show from the record that there was a mutual meeting of the minds between the witness and the questioner. In other words, if the questions were equivocal and subject to more than one interpretation and meaning, then the answers cannot be considered perjurious.

U.S. v. Lattimore, 127 F. Supp. 405, aff'd  
232 F. 2d 234.

REQUEST NO. VII

If you find that the defendant, BENJAMIN EISENBERG, answered truthfully but unresponsively to a question, you must find him not guilty.

Bronston v. U.S., 409 U.S. 359

REQUEST NO. VIII

If you find that the questions were inarticulately phrased and susceptible of more than one interpretation, even though you conclude that the Government has established a contradiction, within one or more of the meanings of said question, you cannot find the defendant, BENJAMIN EISENBERG, guilty.

U.S. v. Wall, 371 F. 2d 398

REQUEST NO. XI

I charge you, as a matter of law, that mere false and evasive declarations alone, are not sufficient to constitute obstruction of justice.

U.S. v. Essex, 407 F. 2d 214

REQUEST NO. XIII

The defendant is not on trial for any act or conduct not alleged in the indictment. You must consider the evidence solely with respect to the specific charges in the indictment and render your verdict based solely upon such charges.

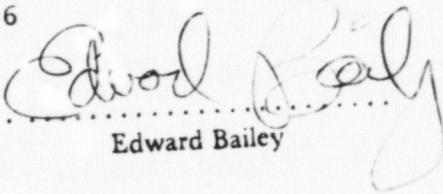
WASHOR

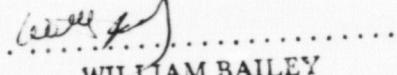
AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 9 day of April , 1976 at No. 1 St. Andrews Plaza, NYC deponent served the within Appendix upon U.S. Atty. So. Dist. of NY the Appellee herein, by delivering a true copy thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me,  
this 9 day of April 1976

  
Edward Bailey

  
WILLIAM BAILEY  
Notary Public, State of New York  
No. 43-0132945  
Qualified in Richmond County  
Commission Expires March 30, 1978 1977